

# Election Results, November 6, 2001

Texas voters approved all 19 constitutional amendments proposed on the November 6, 2001, ballot. Official results released by the secretary of state are shown below. Including these amendments, voters have approved 409 amendments to the Texas Constitution since its adoption in 1876. The House Research Organization Focus Report that follows analyzes all 19 amendments proposed in 2001.

**Proposition 1:** Relinquishing state interest in land in Bastrop County

FOR	596,765	74.4%
AGAINST	205,499	25.6%

**Proposition 2:** Bonds for access roads to border colonias

FOR	507,357	61.4%
AGAINST	318,447	38.6%

**Proposition 3:** Ad valorem tax exemption for raw cocoa and green coffee held in Harris County

FOR	411,339	51.5%
AGAINST	386,931	48.5%

**Proposition 4:** Increasing term of fire fighters' pension commissioner

FOR	583,552	72.1%
AGAINST	226,350	27.9%

**Proposition 5:** Allowing cities to donate used firefighting equipment to foreign countries

FOR	595,707	71.4%
AGAINST	239,139	28.6%

**Proposition 6:** Requiring governor to call special legislative session to appoint presidential electors when outcome is in doubt

FOR	507,716	62.2%
AGAINST	308,643	37.8%

**Proposition 7:** \$500 million in bonds for veterans' housing loans and cemeteries

FOR	611,943	74.7%
AGAINST	207,484	25.3%

**Proposition 8:** General obligation bonds for state agency construction and repair projects

FOR	509,148	62.5%
AGAINST	305,265	37.5%

**Proposition 9:** Canceling special election if legislative candidate is unopposed

FOR	557,707	67.6%
AGAINST	267,724	32.4%

**Proposition 10:** Ad valorem tax exemption for goods in transit

FOR	499,514	63.0%
AGAINST	293,764	37.0%

**Proposition 11:** Allowing school teachers to receive pay for serving on local government boards

FOR	547,588	66.5%
AGAINST	275,575	33.5%

**Proposition 12:** Eliminating duplicative and obsolete provisions from the Constitution

FOR	619,945	76.6%
AGAINST	189,541	23.4%

**Proposition 13:** Allowing school districts to donate old schoolhouses for historic preservation

FOR	658,463	80.4%
AGAINST	160,048	19.6%

**Proposition 14:** Ad valorem tax exemption for travel trailers

FOR	408,481	51.9%
AGAINST	378,557	48.1%

**Proposition 15:** Creating a highway bond fund and allowing state spending on toll roads

FOR	543,759	67.7%
AGAINST	259,188	32.3%

**Proposition 16:** Shortening waiting period for home improvement liens, allowing homestead liens for manufactured homes

FOR	453,021	58.7%
AGAINST	318,517	41.3%

**Proposition 17:** Settling land-title disputes between the state and private landowners

FOR	512,163	64.3%
AGAINST	284,918	35.7%

**Proposition 18:** Consolidating and standardizing court fees

FOR	647,439	81.1%
AGAINST	151,213	18.9%

**Proposition 19:** Additional \$2 billion in general obligation bonds for water projects

FOR	506,077	63.8%
AGAINST	287,339	36.2%

*Source: Secretary of State's Office.*

# HOUSE RESEARCH ORGANIZATION

*focus report*

Texas House of Representatives

August 13, 2001

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## Amendments Proposed for November 2001 Ballot

CONSTITUTIONAL

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# Amending the Constitution

Texas voters have approved 390 amendments to the state Constitution since its adoption in 1876. Nineteen more amendments will be proposed at the general election on Tuesday, November 6, 2001.

## **Joint resolutions**

The Legislature proposes constitutional amendments in joint resolutions that originate in either the House or the Senate. For example, Proposition 1 on the November ballot was proposed by House Joint Resolution (HJR) 52, introduced by Rep. Robby Cook and sponsored in the Senate by Sen. Ken Armbrister. Art. 17, sec. 1 of the Constitution requires that a joint resolution be adopted by at least a two-thirds vote of the membership of each house of the Legislature (100 votes in the House of Representatives, 21 votes in the Senate) to be presented to voters. The governor cannot veto a joint resolution. Amendments may be proposed in either regular or special sessions.

A joint resolution includes the text of the proposed constitutional amendment and specifies an election date. While a joint resolution may include more than one proposed amendment, each proposition on the November 2001 ballot was proposed by a separate resolution. The secretary of state conducts a random drawing to assign each proposition a ballot number if more than one proposition is being considered.

If voters reject an amendment proposal, the Legislature may resubmit it. For example, a proposition authorizing \$300 million in general-obligation bonds for college student loans was rejected at an August 10, 1991, election, then was approved November 5, 1991, after being readopted by the Legislature and resubmitted in essentially the same form. Proposition 3 on the November 2, 1999, ballot, eliminating duplicative and obsolete provisions of the Constitution, also repealed requirements for disclosing Texas Growth Fund investments in South Africa or Namibia, which had the same intent as proposals rejected by the voters in 1995 and 1997.

## **Ballot wording**

The ballot wording of a proposition is specified in the joint resolution adopted by the Legislature, which has broad discretion concerning the wording. In rejecting challenges to the ballot language for proposed amendments, the courts generally have ruled that ballot language is sufficient if it describes the proposed amendment with such definiteness and certainty that voters will not be misled. The courts have assumed that voters become familiar with the proposed amendments before reaching the polls and that they do not decide how to vote solely on the basis of the ballot language.

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## **Election Date**

The Legislature may call an election for voter consideration of proposed constitutional amendments on any date, as long as election authorities have enough time to provide notice to the voters and print the ballots. Most proposals are submitted at the November general elections held in odd-numbered years. In 1997, however, the Legislature submitted, and voters approved, HJR 4, a proposal to raise the homestead exemption for school property taxes and to allow transfer of the 65-and-over tax freeze to a new homestead, at an election held on August 9, 1997. In 2001, the Legislature adopted a proposed amendment, HJR 2 by Chisum, et al./Madla, allowing counties to declare the office of constable dormant, that will not be submitted to the voters until the November 5, 2002, election.

## **Publication**

Texas Constitution, Art. 17, sec. 1 requires that a brief explanatory statement of the nature of each proposed amendment, along with the ballot wording for each, be published twice in each newspaper in the state that prints official notices. The first notice must be published 50 to 60 days before the election. The second notice must be published on the same day of the subsequent week. Also, the secretary of state must send a complete copy of each amendment to each county clerk, who must post it in the courthouse at least 30 days prior to the election.

The secretary of state prepares the explanatory statement, which must be approved by the attorney general, and arranges for the required newspaper publication. The average estimated total cost of publication twice in newspapers across the state is \$80,000, according to the Legislative Budget Board.

## **Enabling legislation**

Some constitutional amendments are self-enacting and require no additional legislation to implement their provisions. Other amendments grant general authority to the Legislature to enact legislation in a particular area or within certain guidelines. These amendments require “enabling” legislation to fill in the details of how the amendment will operate. The Legislature often adopts enabling legislation in advance, making the effective date of the legislation contingent on voter approval of a particular amendment. If voters reject the amendment, the legislation dependent on the constitutional change does not take effect.

## **Effective date**

Constitutional amendments take effect when the official vote canvass confirms statewide majority approval, unless a later date is specified. Statewide election results are tabulated by the secretary of state and must be canvassed by the governor 15 to 30 days following the election.

Analyses of these November 1999 ballot proposals appear in House Research Organization Report No. 76-16, *Constitutional Amendments Proposed for November 1999 Ballot*, August 31, 1999.

**Proposition 1:** Specifying succession for the governor and lieutenant governor

FOR	692,455	74.1%
AGAINST	241,831	25.9%

**Proposition 2:** Revising provisions authorizing reverse mortgages

FOR	583,884	64.2%
AGAINST	325,162	35.8%

**Proposition 3:** Eliminating duplicative and obsolete provisions from the Constitution

FOR	720,085	76.8%
AGAINST	217,856	23.2%

**Proposition 4:** Defining charitable organizations and uses exempt from property taxes

FOR	483,674	51.8%
AGAINST	450,357	48.2%

\* **Proposition 5:** Allowing state employees to be paid for service on local government boards

FOR	427,043	45.4%
AGAINST	513,295	54.6%

**Proposition 6:** Increasing the maximum size of an urban homestead to 10 acres

FOR	635,020	67.5%
AGAINST	306,390	32.5%

**Proposition 7:** Authorizing garnishment of wages to enforce spousal maintenance

FOR	644,742	67.4%
AGAINST	311,561	32.6%

\* **Proposition 8:** Providing that the adjutant general serves at the pleasure of the governor

FOR	430,356	47.3%
AGAINST	478,706	52.7%

\* **Proposition 9:** Creating a judicial compensation commission

FOR	369,235	40.9%
AGAINST	533,061	59.1%

\* **Proposition 10:** Providing that the health and human services commissioner serves at the pleasure of the governor

FOR	439,505	47.9%
AGAINST	478,875	52.1%

**Proposition 11:** Allowing political subdivisions to buy nonassessable property and casualty insurance

FOR	566,408	62.2%
AGAINST	343,980	37.8%

**Proposition 12:** Exempting from ad valorem taxation vehicles leased for personal use

FOR	530,181	57.1%
AGAINST	398,705	42.9%

**Proposition 13:** Authorizing \$400 million in general-obligation bonds for student loans

FOR	674,249	71.0%
AGAINST	275,392	29.0%

**Proposition 14:** Allowing state boards to have an odd number of three or more members

FOR	664,727	73.2%
AGAINST	243,307	26.8%

**Proposition 15:** Authorizing agreements to convert separate property to community property

FOR	637,087	67.4%
AGAINST	308,342	32.6%

**Proposition 16:** Changing county population limits for JP and constable precincts

FOR	579,777	64.1%
AGAINST	325,183	35.9%

**Proposition 17:** Revising Permanent University Fund distribution and investment

FOR	553,859	61.2%
AGAINST	350,718	38.8%

\* *Failed*

Source: Secretary of State's Office.

# Relinquishing state interest in land in Bastrop County

(HJR 52 by Cook/Armbrister)

1  
Proposition

Texas Constitution, Art. 7, sec. 4, regulating the sale of Permanent School Fund (PSF) land, provides that “the Legislature shall not have the power to grant any relief to purchasers thereof,” thus limiting the Legislature’s ability to transfer public school land for less than its fair market value.

Under a law dating to 1836, settlers had the right to survey land they wanted to claim or purchase, but the state retained all land not specifically claimed in those surveys. In 1900, all unpatented Texas land that was not held or dedicated for other purposes reverted to the School Land Fund, overseen by the General Land Office (GLO).

A “vacancy” is a piece of unsurveyed land that is property of the PSF and not part of any patented survey. In 1925, a vacancy was discovered in Bastrop County as part of the A.P. Nance Survey of 221 acres. The tract is a strip of land 400 feet wide and about four miles long outside Elgin. The Nance Survey was completed and filed with the county and with the GLO, which neither accepted nor rejected the survey. The 221-acre tract is among the 741,000 acres of surveyed, unsold school land held in the GLO “scrap file,” so called because it stores applications to buy “scraps” of land between existing surveys. Most of the 16,000 scrap files record applications to buy unsurveyed land, but the Nance Survey tract falls in a small category of vacant, surveyed land.

Some of the adjoining landowners bought portions of the Nance Survey tract, and others have occupied, fenced, and paid taxes on portions of the PSF land. In 1999, the GLO resurveyed the Nance Survey and identified owners occupying PSF land. In 2000, several title companies paid the PSF the fair market value of the land to resolve a dispute with 11 people who held 21.16 acres and had bought title insurance. Another person was offered an opportunity to clear the title but chose not to do so. Still unresolved is the status of 127 acres held by 20 people. The remainder of the Nance Survey tract is county roads, railroad lines, and land held by the Texas Department of Transportation (TxDOT).

In 1981, 1991, and 1993, Texas voters amended the constitution to remedy title defects for certain landowners. These amendments allowed the GLO to issue patents — original titles to land granted by the state — to qualified applicants whose land titles were defective.

## Digest

Proposition 1 would amend Art. 7, sec. 2A of the Constitution to relinquish the state’s surface interest in the disputed tracts in the Nance Survey in Bastrop County. The amendment would not include the TxDOT land or the county roads and railroad lines. The state would retain any mineral interest in the land.

Proposition 1 would cancel any outstanding land award or land-payment obligation owed to the state and would provide that any such previous payments may not be refunded. The amendment would direct the GLO to issue patents to those landowners without requiring

a filing or patent fee. The proposal would be self-executing upon voter approval of the amendment and would not require separate enabling legislation.

The ballot proposal reads: “The constitutional amendment providing for clearing of land titles by the release of a state claim of its interest to the owners of certain land in Bastrop County.”

### **Supporters say**

Proposition 1 is needed to clear the title to land held by innocent parties, resolve an inequity, and save the state an expensive court fight. It would be a straightforward and fair way to resolve a complicated land dispute in which it is unclear whether landowners were aware they were occupying state land. Those who have built their homes and paid taxes on the property should not be penalized for a surveying mistake made more than 100 years ago.

This amendment would save the state money in the long run, largely by saving the expense of prolonged litigation. It is difficult to assign a monetary value to the state’s decision to treat the remaining landowners in a fair and equitable manner. Currently, the lands have no mineral leases and produce no income for the PSF, and the state would retain the mineral interest in the land transferred.

The title companies should have alerted the claimants to the possible title problems when research was done regarding land sales and other transactions involving the Nance Survey tracts. It was not unreasonable for the title companies to make restitution to the property owners and the PSF in this unique situation, but the state should take some other measure to provide for claimants without title insurance.

Proposition 1 would follow the precedent in resolving other disputes over state lands. Texas voters approved similar amendments in 1981, 1991, and 1993 to remove clouds over land titles affecting specific landowners. However, the provisions of these previous constitutional amendments have expired, and another constitutional amendment is needed to address the Bastrop County situation.

Proposition 1 likely would be the last amendment to address specific landowners’ concerns if voters also approve Proposition 17 on this ballot, which would allow the School Land Board to resolve such disputes without a constitutional amendment. The Bastrop County claimants deserve a quicker resolution to their concerns through this amendment. Because of some unique circumstances, the affected Bastrop County landowners would not qualify for relief under the more general provisions under Proposition 17, even if that constitutional amendment is approved. Voters should approve both amendments, with Proposition 1 providing a remedy to known landowners with title defects and Proposition 17 addressing future cases involving currently unknown claimants.

### **Opponents say**

Proposition 1 would not treat all claimants to the Nance Survey equally. Those with title

insurance were able to make claims to clear their land titles, and the state received compensation for 21.16 acres in the disputed tract. The GLO estimates the value of the remaining tract at about \$383,000, and relinquishing state claims to the land would represent a loss to the PSF.

Texas voters should not have to judge individual land-title disputes. Such matters are best left to the courts. Rather than continue to clutter the Constitution with exceptions for a few individuals, an ongoing mechanism should be established to settle these matters. The Bastrop claimants should be subject to Proposition 17, if approved by voters, and should not receive the benefit of a separate constitutional amendment.

## **Notes**

Proposition 17 (HJR 53 by Cook/Armbrister), also on the ballot, would amend the Constitution to authorize the Legislature to resolve certain land-title disputes between the state and private landowners without seeking a specific constitutional amendment. (See pages 52-54.)

## Authorizing bond issuance for access roads to border colonias

(SJR 37 by Lucio, et al./Flores)

Texas Constitution, Art. 3, sec. 49 prohibits state debt. It generally requires the Legislature to submit for voter approval proposals authorizing general obligation bonds backed by the state's credit, usually by constitutional amendment. Sec. 49-j limits annual state debt payable from general revenue to 5 percent of the annual average amount of nondedicated general revenue for the three preceding fiscal years.

Colonias are rural residential subdivisions located in unincorporated areas of counties, typically consisting of substandard housing with few utilities or amenities and little or no infrastructure. Since the 1950s, more than 1,400 colonias housing more than 400,000 residents have been built along the Texas-Mexico border. Many colonias lie in floodplains near the Rio Grande.

### Digest

Proposition 2 would add Art. 3, sec. 49-l to the Constitution to allow the Legislature by law to authorize the creation of a roadway bond program for colonias along the Texas-Mexico border. Lawmakers could allow the governor to authorize the Texas Public Finance Authority (TPFA) to issue up to \$175 million in general obligation bonds or notes and to make related credit agreements. The proceeds could be used only to assist border counties with access road projects to connect colonias to existing public roads. Projects could include construction of the access roads, acquisition of materials for maintenance, and construction-related projects such as road drainage. Part of the bond proceeds and interest could be spent for administrative costs and for payments on credit agreements. General revenue appropriations would have to be made annually to cover unpaid principal and interest due each fiscal year, including on credit agreements.

The Texas Transportation Commission (TTC), in consultation with the Governor's Office, could determine what constituted a border colonia for purposes of selecting counties and projects that could receive assistance.

The ballot proposal reads: "The constitutional amendment authorizing the issuance of state general obligation bonds and notes to provide financial assistance to counties for roadway projects to serve border colonias."

### Supporters say

Proposition 2 would create a new state funding source to help provide much-needed access to and from colonias. Many colonias residents originally were victimized by unscrupulous developers who did not provide or arrange for basic services or adequate infrastructure. While the state has made progress in addressing some of the colonias' water, sewage, and utility problems, access to and from colonias remains inadequate. For example, many colonias roads are unpaved — or even dirt — and inaccessible by school buses. Continued

neglect would allow the situation to deteriorate as population grows and traffic increases, exacerbated by the effects of the North American Free Trade Agreement.

Although border counties have upgraded some main roads, these counties do not have the resources to meet the huge infrastructure needs of colonias. By financing grants through low-interest bonds backed by the state's credit, Proposition 2 would give these counties an incentive to develop local solutions to the colonias' access problems. This approach would make the greatest impact soonest. It also would mark the first time Texas has issued general obligation bonds to pay for building roads. Waiting to "pay as you go," as Texas does for highways, would be tantamount to doing nothing for colonias residents.

Roads in colonias are in a state of bureaucratic limbo. Because the roads are on private property, counties are not responsible for them. The roads are ineligible for conventional funding through the Texas Department of Transportation (TxDOT) because they are not part of the state road system. However, TxDOT's expertise in administering transportation-related grant programs is needed to provide strategic coordination of what is a regional problem beyond the scope of individual counties. TxDOT has spent considerable time and resources studying and meeting transportation needs along the border in recent years. Requiring TTC to consult with the governor on the criteria for assistance, as required by the amendment's enabling legislation (SB 1296 by Lucio, et al./ Flores), would ensure a fair and equitable selection and distribution process.

Borrowing up to \$175 million through bond sales would cost the state about \$31 million in debt service per biennium. At an average estimated cost of \$90,000 per mile, about 2,000 miles of access roads could be built. That would make a significant start toward making colonias more livable and lifting their residents out of poverty. TxDOT likely would make road maintenance a condition of the grants it would award counties to build the roads. The proposed amendment specifically would make related projects and acquisition of maintenance materials eligible for funding and would not preclude public-private partnerships for access road maintenance and operation.

It would be imprudent to wait until the Legislature appropriated money to pay for the bonds before starting the program; this would delay construction needlessly. Approval of the constitutional authorization for the bonds is paramount and would enhance future funding prospects. Much of the program's necessary groundwork set forth in the enabling legislation, SB 1296, can proceed without bond debt-service funding under Rider 52 in TxDOT's fiscal 2002-03 budget. That rider, which was adopted in case Proposition 2 fails, authorizes TxDOT to spend highway construction money to establish a colonias road access program. Toward that end, the secretary of state already has begun development of the rulemaking process with TxDOT, as required by SB 1296. If sufficient progress on program development were made during fiscal 2002, mechanisms for potential funding are available that could allow limited bond issuance before the 2003 legislative session. Another option would be to issue bonds for which debt service would not be due and payable until after fiscal 2003. On the other hand, because road project preparation typically is lengthy, the program might not be in a position to issue bonds at all before January 2003. In that case, the Legislature could determine funding sources during its next regular session, and work could begin as soon as it did so.

Colonias are no more flood-prone than any other area of the Lower Rio Grande Valley. Building roads there would be no riskier or more expensive than anywhere else in the region. Relocating colonias residents would be unfeasible, and the prohibitive costs of doing so would far exceed those of improving infrastructure.

## **Opponents say**

Borrowing money by issuing state bonds to pay for roads is and always will be a bad idea. Interest and other costs make bonded roads more expensive and mortgage future funds that cannot be spent on other priorities. Like families and businesses, government should wait until it can afford projects and should not spend beyond its means.

Colonias are located on private property. Though regrettable, the conditions there are not state government's responsibility. Taxpayers already have spent more than half a billion dollars (state and federal) through various state agencies over the past 12 years to address numerous problems associated with colonias. Building local access roads with borrowed state money, regardless of the circumstances, would set a bad precedent.

Because colonias often are located in difficult, flood-prone terrain, an extensive network of access roads for these areas would be prohibitively expensive and possibly short-lived. These factors would make them less attractive to bond investors, possibly resulting in higher interest rates. No comprehensive study exists to give taxpayers an idea of how many roads or how much money would be needed to provide adequate access to colonias. Undoubtedly, however, the projected 2,000 miles of new or improved roads financed by these bonds would not come close to rectifying this deplorable situation. The proposal also is unclear as to who would perform long-term maintenance or pay for related costs. Consequently, the proposed road expenditures could prove to be a case of throwing good money after bad. The state could make better use of its limited resources by relocating the colonias residents to more habitable locales.

## **Other opponents say**

The 77th Legislature appropriated no money directly for debt service on the bonds that Proposition 2 would authorize. The absence of specific debt-service funding for this program makes bond issuance much less likely before the next legislative session in 2003 and might delay it further. Even if voters approve this amendment, it could be several years before any road construction begins. By then, given the border area's rapid population growth, the number and size of colonias could have increased significantly.

The Senate-approved version of SB 1 by Ellis, the general appropriations bill for fiscal 2002-03, contained a contingency rider that would have appropriated \$30 million to TxDOT to pay debt service costs for bonds authorized by Proposition 2, but the final version of the state budget excluded the rider. Although TxDOT's Rider 52 in the final version of the state budget authorizes spending from highway construction funds to establish a colonias access road program, that money is dedicated constitutionally to spending on state highway system projects and almost certainly could not be used to retire colonias road bonds.

Underserved areas with inadequate roads are not limited to the Texas-Mexico border. The program proposed by Proposition 2 would favor one area of the state over others and would neglect other needy Texans. Rider 52 limits the program to counties in TxDOT's El Paso, Laredo, and Pharr districts. In fairness, the proposed program should be broadened to include similar communities across the state, rather than only those in one geographic area.

TxDOT receives federal and some state funds to pay for contracts to build highways, not residential and access roads. It is primarily a grant recipient agency with little expertise in grant administration and virtually no model on which to pattern this program. The Governor's Office or the Texas Department of Housing and Community Affairs could grant money directly to counties more efficiently.

## Notes

SB 1296, the enabling legislation for SJR 37, would take effect if and when the amendment set forth in Proposition 2 takes effect. SB 1296 would direct TPFA to issue up to \$175 million in general obligation bonds for colonias access roads, as authorized by the Governor's Office, and to distribute the proceeds from bond and note sales to counties as directed by TxDOT. The Governor's Office would determine the timing and amount of the sales. TPFA could enter into one or more of a variety of credit agreements to enhance the bonds' or notes' marketability, security, or creditworthiness.

TTC would administer the program in cooperation with the Governor's Office, Secretary of State's Office, and the Texas A&M University Center for Housing and Urban Development. TxDOT's budget Rider 52 in SB 1, the general appropriations act for fiscal 2002-03, requires collaboration with the Texas Water Development Board as well. By rule, TTC would define border colonias, establish area selection and project eligibility criteria, and set minimum road standards, grant application procedures, and recipient counties' financial reporting requirements. TTC also would select grant recipients and determine the grant amounts awarded.

TxDOT's budget Rider 52 requires TxDOT to use highway construction funds to establish a transportation program to improve access to colonias, limited to counties in the El Paso, Laredo, and Pharr highway districts. In developing rules and procedures for the program, TxDOT must consider such factors as colonia population, condition of current roads, school bus routes, and access to other parts of the region.

## **Authorizing ad valorem tax exemption for raw cocoa and green coffee held in Harris County**

**(SJR 47 by Gallegos/J. Moreno)**

Under Texas Constitution, Art. 8, sec. 1(b), all tangible personal property, including inventories, held for the production of income is subject to ad valorem taxation unless specifically exempt under the Constitution.

### **Digest**

Proposition 3 would add Art. 8, sec. 1-n to the Constitution to allow the Legislature to exempt from ad valorem taxation raw cocoa and green coffee held in Harris County. The Legislature could impose additional requirements for qualifying for the exemption.

The ballot proposal reads: “The constitutional amendment to authorize the legislature to exempt from ad valorem taxation raw cocoa and green coffee that is held in Harris County.”

### **Supporters say**

Exempting coffee and cocoa inventories from ad valorem taxation in Harris County would make the Port of Houston eligible to be designated an exchange port for coffee by the New York Board of Trade. The board has said that it will not consider the county’s application unless coffee and cocoa are exempted from taxation. This designation would bring global recognition and marketing power to Houston, which would be one of only four designated coffee ports in the nation, along with New York, New Orleans, and Miami, and the only one west of the Mississippi. After Miami was certified as a coffee port in 1997, its coffee imports increased from 82,000 to 1.2 million bags in three years.

Although exempting coffee from property taxes would decrease local tax revenue in the short run, Houston’s certification as a coffee port would spur long-term investment in local warehouse facilities, create jobs, and bring additional business to trucking and distribution companies across the state. As many as five to 10 food-grade, state-of-the-art warehouses would be built in Harris County in the wake of certification. Increased property-tax revenues due to this new construction, along with job growth and other statewide economic benefits, would more than make up for the short-term loss in tax revenue. Currently, the \$300,000 in annual tax revenue from coffee in Harris County is spread among three school districts.

Although other ports in Texas could serve as exchange ports, they are not eligible for certification. The New York Board of Trade has stated that if it grants coffee-exchange status to a port in Texas, that port will be the Port of Houston. Other ports, however, could benefit from Houston’s certification by arranging to transport coffee by land to warehouses in Harris County.

Exempting coffee and cocoa from taxation in Harris County would not suggest that the

state condones human-rights violations associated with coffee and cocoa production in West Africa. The port does not import cocoa beans — typically a West African commodity — nor does it import coffee from West Africa. Designation as an exchange port for coffee would make the port eligible to import specialty coffees such as those produced in Mexico and Central and South America. West African coffee is not traded on the exchange. Proposition 3 would include a tax exemption for cocoa simply so that Harris County could seek exchange-port status for cocoa in the future without amending the Constitution again.

## Opponents say

Exempting coffee and cocoa from ad valorem taxation would reduce tax revenue for local governments in Harris County. In particular, some school districts could be hurt by the drop in revenue. In addition, creating an exemption for a specific industry in a specific county would require other businesses and residential property owners in the county to bear more of the burden of funding public services. It also would set a bad precedent by encouraging other types of businesses to try to carve out similar exemptions for their benefit.

Amending the Constitution to create a special tax-exempt status for coffee and cocoa would send the message that Texas is willing to overlook the notoriously poor human-rights records of these industries in the hope of producing economic benefits for a single Texas county. Human-rights violations are especially prevalent in coffee and cocoa production in West Africa. In February 2001, the U.S. State Department reported that about 15,000 children work in the coffee and cocoa fields of Cote d'Ivoire, the world's largest producer of cocoa beans and the largest coffee exporter in Africa. Many of these children have been taken from other West African nations and sold into indentured servitude to plantation owners. In the fields, children — often younger than 12 years old — work 12-hour days harvesting coffee or cocoa. Economic gains in Texas should not come at the expense of children in other parts of the world.

## Other opponents say

A tax exemption for coffee should not be granted only to Harris County. Other ports in Texas share Houston's proximity to coffee-growing regions and consumer markets. Ports in Corpus Christi or Brownsville also should benefit from any tax exemption on certain commodities. Also, once the import market is established, the special tax break should be phased out.

## Notes

SB 1574 by Gallegos/J. Moreno, enacted by the 77th Legislature, would revise the Tax Code to implement the provisions of Proposition 3 if voters approve the proposal. An exemption claimed under this statute would not have to be claimed in subsequent years and would apply to all raw cocoa and green coffee held by an owner until the commodity's qualification for the exemption changed. However, the chief appraiser could require an owner who had received an exemption in a prior year to file a new application to confirm the commodity's qualification for the exemption.

## **Increasing the term of the fire fighters' pension commissioner**

**(HJR 1 by McCall, et al./Zaffirini)**

The Legislature created the Office of the Fire Fighters' Pension Commissioner in 1937 (V.T.C.S., art. 6243e) to provide a statewide, professionally managed and administered retirement system for volunteer fire fighters and emergency medical services personnel. The agency administers the Texas Local Fire Fighters' Retirement Program (TLFFRP), which includes 136 systems, including 38 paid, three part-paid, and 95 volunteer local fire fighter retirement systems. In fiscal 1999, these pension systems served 6,700 active fire fighters and almost 3,300 benefit recipients and had assets worth about \$829 million. In 1977, the Legislature enacted the Texas Statewide Emergency Services Personnel Retirement Act, creating a statewide pension fund that pools the assets of volunteer fire departments. At the end of fiscal 2000, 154 local volunteer fire departments participated in this pension system, which has assets of about \$35 million.

The fire fighters' pension commissioner is appointed for a two-year term by the governor from a list of three to 10 nominees submitted by the State Firemen's and Fire Marshals' Association of Texas and the Texas State Association of Fire Fighters. The appointment is subject to Senate confirmation. The Texas Statewide Emergency Services Personnel Retirement Fund is governed by a nine-member board whose members are appointed by the governor and confirmed by the Senate for six-year terms. The commissioner serves as executive director of the statewide fund.

Texas Constitution, Art. 16, sec. 30(a) limits the duration of all statewide offices to two years unless otherwise specified in the Constitution. Art. 16, sec. 30a allows the Legislature by law to create boards and commissions with members serving six-year staggered terms, and various sections specify that statewide elected executive officials have four-year terms and that railroad commissioners serve six-year terms. Eight executive offices other than the fire fighters' pension commissioner, including the adjutant general, State Board of Education chair, health and human services commissioner, insurance commissioner, and public counsels for the Office of Public Utility and Office of Public Insurance, serve two-year terms. Members of about 40 boards and commissions serve two-year terms, including members of the Texas Agricultural Finance Authority Board, Texas Energy Coordination Council, Advisory Committee on Fire Ant Research and Management, Gulf Coast Waste Disposal Authority Board, Texas Humanities Council, and Governor's Commission on Women.

The Office of the Fire Fighters' Pension Commissioner assists local departments in the TLFFRP by verifying retirement and death benefits; certifying creditable time toward members' retirement; verifying contributions; archiving records; reviewing annual reports; sponsoring a yearly educational seminar; publishing a newsletter; and handling appeals from decisions by local pension boards. The agency also provides administrative support for the statewide pension fund. SB 1 by Ellis, the general appropriations act for fiscal 2002-03, authorizes \$916,000 in funding for the agency, including about \$220,000 in general revenue, and 8.5 full-time equivalent employee positions, with the commissioner receiving a salary of \$57,000 per year.

## Digest

Proposition 4 would amend the Constitution, Art. 16, sec. 67 to specify a four-year term for the fire fighters' pension commissioner, if the Legislature provides for such an office. The ballot proposal reads: "The constitutional amendment providing for a four-year term of office for the fire fighters' pension commissioner."

## Supporters say

Proposition 4 would eliminate the cumbersome process of selecting a nominee and securing Senate confirmation of the fire fighters' pension commissioner every legislative session. The proposed change in the commissioner's term from two to four years would make the term coincide with that of the governor who appoints the commissioner. As it is, the commissioner's term begins July 1 following a legislative session. A two-year term and nomination process is disruptive, and the commissioner barely can get through one legislative session before having to begin the process again.

The fire fighters' pension commissioner administers the agency, and a longer term would help ensure continuity and experience in the position. Reviewing the position every two years can disrupt agency operations even if the incumbent is retained for additional terms. Many other gubernatorial appointees serve four- or six-year terms, and Proposition 4 would bring the term of the fire fighters' pension commissioner more into line with those of other appointees, including the nine members of the Fire Fighters' Relief and Retirement Fund board of trustees, who serve six-year terms.

The fire fighters' pension commissioner should remain a statewide appointed position, and the office should continue as a state agency. The existing structure gives the commissioner and the agency the stability and statewide credibility needed to manage local fire department pension systems. Eliminating the office would be detrimental to programs that rely on the commission for critical assistance, an appeals process, and educational and records-retention services. These programs generally must rely on off-duty board members, who are full-time fire fighters and not administrators, to fulfill administrative functions. Frequent turnover on these local boards and a growing need for pension fund administration make oversight and assistance for these local programs even more important.

## Opponents say

The term of the fire fighters' pension commissioner or of any other appointed office should not be set in the Constitution, which already is bloated with overly specific and constraining provisions. Other executive directors, including the insurance and health and human services commissioners, who have far more extensive responsibilities, face review by the governor and Senate every two years without significant disruption.

Instead of establishing specific constitutional provisions for every office, the Legislature should propose deleting the two-year term limitation in Art. 16, sec. 30. This restriction

dates to the 19th century as part of an effort to limit government. It was appropriate when the term of office for statewide elected executive officials, including the governor, was set at two years, but it is now obsolete. If this provision were deleted, the Legislature could set reasonable terms of office for all appointed offices and could end the need for separate voter approval of constitutional amendments such as Proposition 4.

### **Other opponents say**

The fire fighters' pension commissioner no longer should be an appointed state official, and the agency itself should be abolished. In 1988, the Legislature eliminated a major function of the office when it stopped funding local fire department pension systems. Many of the office's remaining activities related to helping local pension systems manage their affairs are a holdover from a time when the state had more involvement with and even provided funding for these systems. Now, few local pension systems require the help of a state commissioner to operate their retirement programs successfully. The state has shifted oversight of other statewide pension systems, such as the Texas Municipal Retirement System and the Texas County and District Retirement System, to quasi-independent management boards without adversely affecting the actuarial soundness or security of these pension funds.

### **Notes**

HB 1747 by McCall, et al./Zaffirini, enacted by the 77th Legislature, extended the existence of the commissioner's office until September 1, 2011, and would increase the commissioner's term from two to four years if voters approve Proposition 4.

In 1999, Texas voters rejected two proposed amendments that would have allowed the adjutant general (Proposition 8) and the health and human services commissioner (Proposition 10) to serve at the pleasure of the governor rather than for two-year terms.

# Allowing cities to donate used firefighting equipment to foreign countries

(SJR 32 by West/Solis)

5

Proposition

Texas Constitution, Art. 3, sec. 52 prohibits the Legislature from authorizing any county, city, town, or other political subdivision from making loans or granting public money or any thing of value to any individual, association, or corporation. Exceptions to this prohibition allow a political subdivision to lend its credit for certain economic development and improvement purposes.

Education Code, sec. 88.106 authorizes the director of the Texas A&M University System board of regents to sell, lend, or make available used or obsolete firefighting equipment to the Texas Forest Service (TFS) to use or to distribute to other volunteer fire departments. Government Code, sec. 791.011 authorizes a local government to contract with another local government in Texas or a bordering state to provide firefighting services.

## Digest

Proposition 5 would amend Art. 3, sec. 52 to authorize municipalities to donate outdated or surplus firefighting equipment, supplies, or other materials to an underdeveloped country.

The ballot language reads: “The constitutional amendment authorizing municipalities to donate outdated or surplus firefighting equipment or supplies to underdeveloped countries.”

## Supporters say

Proposition 5 would assist Mexico by allowing Texas cities and towns to donate equipment that no longer meets departmental standards in the state but is still usable. Because some firefighting forces in Mexico have no appropriate gear or equipment, Texas’ outdated equipment would help our international neighbor with public and firefighter safety and would be a significant goodwill gesture. A constitutional amendment is necessary because Art. 3, sec. 52 prohibits cities from donating public property without a specific exception.

Donating equipment to border areas of Mexico could help protect Texas cities, rural areas, and parklands. Dry southwestern landscapes are vulnerable to fires, and uncontained fires along the border could spread to Texas. Equipment donated to Mexico would be a good investment in border safety.

Underdeveloped countries could make good use of the donated equipment even without additional resources for upkeep and repair. While fire trucks and other mechanical pieces of equipment would require a continuing commitment of funds, firefighting gear such as fire-resistant coats, axes, and hoses could be used as they are. The lack of funds in areas that need basic equipment should not prevent Texas cities and towns from donating gear.

Proposition 5 would not mandate the donation of equipment. Municipalities would retain

discretion on how to dispose of outdated equipment, whether to a developing country like Mexico or to other Texas cities or bordering states. Also, agreements would be made between the donating departments and foreign governments, not between individuals.

Texas municipalities pay for their firefighting equipment and should be able to dispose of it by donating it to a foreign country. For example, a border city might elect to donate equipment to Mexico, while another city might choose to donate to some other underdeveloped nation in need, such as in Central America or Africa.

### **Opponents say**

Some fire departments in Texas and bordering states do not have enough firefighting equipment and rely on donated equipment and gear to protect their communities and land from fires. Given the limited supply of equipment, donations to Mexico or other foreign countries would deprive some Texas cities of this equipment. Currently, there are more than 2,500 outstanding requests for equipment donations and only 128 donors through TFS' Helping Hands Program. Texas' local governments should receive priority over foreign countries when equipment is available to be donated.

Texas municipalities could sell equipment at a reduced cost to Mexican firefighting organizations, rather than donating it outright. Current law allows cities and towns to sell the equipment but does not provide for a reduced-cost arrangement for such sales. Because Texas taxpayers have paid for the equipment, they should retain part of their investment if the asset leaves the country. Sale by Texas municipalities of equipment to Mexico at a reduced cost would convey goodwill toward Mexico while retaining part of the communities' investment in firefighting.

Donating equipment that is outdated and no longer cost-effective to maintain would not help Mexico, because local firefighting organizations in Mexico are unlikely to have the resources to keep this old equipment running. It would be better to donate the equipment to a local government, rural fire prevention district, or volunteer fire department in Texas with the resources to ensure continuing effective use of the equipment.

Donated equipment sent across the border could not be monitored for frequency of use or appropriate use. TFS has many programs that involve monitoring the activities of volunteer fire departments but has no programs in other countries that would monitor donated equipment. Foreign fire departments could misuse the equipment and cause injury or harm or could sell the equipment.

By allowing Texas cities and towns to donate firefighting equipment to any underdeveloped country, not solely Mexico, Proposition 5 could lead to inappropriate gestures of goodwill, such as donations to Cuba, for example. Texas should be careful about allowing its municipalities to practice international diplomacy without state or national oversight.

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# Requiring the governor to call a special legislative session to appoint presidential electors when outcome is in doubt

(HJR 45 by Tillery, et al./Shapiro)

6  
Proposition

Under Art. 2, sec. 1 of the U.S. Constitution, the president and vice president are to be chosen by electors. Each state must appoint, in a manner directed by the legislature, a number of electors equal to the whole number of senators and representatives to which the state is entitled in Congress. In most states, including Texas, the entire slate of electors pledged to a presidential ticket are chosen if the ticket receives the most votes statewide in the election.

Chapter 243 of the Texas Election Code governs a contested election for presidential electors. In the event of an election contest, the governor serves as the tribunal, presides over the contest, and determines the outcome, declaring which slate of presidential electors wins. The governor must declare which set of presidential electors is elected at least seven days before the Electoral College is required to convene. Election Code, chapter 192 governs the appointment of electors and requires the electors to convene and cast their votes at the State Capitol at 2 p.m. on the first Monday after the second Wednesday in December following the general election, the date set by federal law (3 U.S.C., sec. 7).

Under 3 U.S.C., sec. 5, a state's final determination of any controversy or contest involving electors is conclusive if the determination is made pursuant to state laws in effect before the election and if the determination is made at least six days before the meeting of the Electoral College. This is known as the "safe harbor" provision, because it is intended to prevent last-minute changes in how electors are to be chosen.

Texas Constitution, Art. 4, sec. 8 allows the governor, on extraordinary occasions, to convene the Legislature in special session. The governor's proclamation of the session must state specifically the purpose for which the Legislature is convened. Art. 3, sec. 40 prohibits the Legislature during special sessions from considering legislation on subjects other than those designated in the governor's proclamation and limits the duration of special sessions to no longer than 30 days.

## Digest

Proposition 6 would amend Texas Constitution, Art. 4, sec. 8 to require the governor to call a special session of the Legislature to appoint presidential electors if the governor determined that it was reasonably likely that a final determination of the appointment of electors would not occur before the certification deadline. The Legislature could not consider any other subject or issue during that special session.

The ballot proposal reads: "The constitutional amendment requiring the governor to call a special session for the appointment of presidential electors under certain circumstances."

## Supporters say

The national controversy over the razor-thin presidential election in November 2000 and the subsequent recount in Florida that left many questioning the outcome — ultimately decided by the U. S. Supreme Court — has prompted a reexamination of voting procedures in Texas and other states. Proposition 6 would provide clear guidelines for the governor to call a special session for the Legislature to choose presidential electors in the event of an election contest such as the one in Florida. Under current law, it is not clear whether the governor constitutionally could be required to call a special session for this purpose. Although it is very unlikely that Texas would wind up in a post-election debacle such as in Florida, such an outcome is possible. If, for whatever reason, the governor could not decide an election contest of presidential electors, it would be prudent to have the provisions of Proposition 6 in place to give the governor and the Legislature clear direction.

Proposition 6 would remove any question that the Texas Legislature has the ultimate authority to ensure that Texas is not disenfranchised and prevented by an electoral stalemate from choosing electors to cast the state's votes for president and vice president in the Electoral College. Because of widespread confusion, legal skirmishing, and state and federal judicial proceedings, the Florida dispute lasted 36 days. The Florida legislature convened for the purpose of choosing electors, and although the U.S. Supreme Court resolved the issue before the legislature decided to act, legal scholars disagreed about whether the legislature had the authority to convene for such a purpose. A select joint committee of the Florida legislature heard testimony from constitutional scholars, law professors, and election law experts. The committee concluded that the Florida legislature had legal authority to provide for the manner of appointment of electors. They cited as the source of this legislative authority Art. 2, sec. 1 of the U.S. Constitution, which grants plenary or absolute power to state legislatures to determine the manner of appointment of presidential electors.

A similar delay in Texas could cause the state to lose its electoral votes, thus disenfranchising Texas voters. If Texas experienced an election contest and the final determination was not made by the date required by federal law, the state could risk not having its electoral votes counted, leaving the final decision to Congress. This amendment would boost confidence among Texas voters that the presidential election process is safe and secure and that one way or another Texas electors will be appointed and cast their votes.

Proposition 6 would ensure in a nonpartisan way that Texans would select their electors without running afoul of the federal cutoff dates. It would create a fallback position in the unlikely event that, for whatever reason, the governor could not or would not decide an election contest. It also would ensure that any post-election actions in state courts would not interfere with the Legislature's use of the "safe harbor" provision in federal law, which allows a final, conclusive determination of a state's electors if the election outcome remains in doubt up to the deadline for naming electors. Unlike in Florida, the Texas Legislature cannot call itself into session, so Proposition 6 would require the governor to call a special session under the extraordinary circumstances of a deadlocked election.

Special sessions are expensive, and the decision to call one should not be made lightly. Proposition 6 would place a clear, unambiguous duty on the governor, if the likelihood existed that the appointment of electors would not occur before the deadline, to call a special session for the Legislature to appoint Texas' presidential electors.

## Opponents say

Proposition 6 is not needed, because current statutory and constitutional law already authorizes the governor to preside over contests of presidential electors and to make the final determination, as well as to call special sessions of the Legislature. This amendment would not aid the resolution of a contested situation, because the governor already has the authority to resolve it. Moreover, it could allow a partisan Legislature to circumvent the will of the voters and appoint a slate of electors pledged to a presidential candidate other than that chosen by the voters.

This amendment could have the unintended consequence of restricting the Legislature's as well as the governor's authority once a special session was called for the purpose of determining electors. Once such a special session was called, the Legislature could address no subject other than the appointment of presidential electors. This restriction would prevent lawmakers from dealing with any and all crises that might arise during that special session, whether or not they were election-related.

Regarding the post-election situation in Florida, some constitutional scholars argued that because of the circumstances surrounding the election, the special session was unlawful. They said that any bill or resolution adopted to mandate the appointment of presidential electors unconditionally would be unprecedented and contrary to the U.S. Constitution, federal law, and Florida's election laws. One scholar said that a legislature may not deprive any candidate's supporters of the legal consequence of their votes without due process and that, in that instance, a legislative determination would have violated due process and should be left to the courts to decide. Yet Proposition 6, by mandating a special session to appoint electors, would remove from the governor and the Legislature the discretion whether to allow the courts to make the final determination concerning which electors should be chosen.

## **Authorizing \$500 million in bonds for veterans' housing loans and cemeteries**

**(HJR 82 by Counts, et al./Truan)**

The Veterans' Land Program, established in 1949, uses bond funding to buy land and then resell it to eligible veterans under a 30-year contract of sale and purchase. The Veterans' Housing Assistance Program, established in 1983, helps eligible Texas veterans buy new or existing homes by providing low-interest loans up to \$150,000. The Veterans' Financial Assistance Program, established in 1993, provides financial assistance to veterans for the purchase of land and for home mortgage loans. All three programs are administered by the Veterans' Land Board (VLB) through the General Land Office, as authorized under Natural Resources Code, chapters 161, 162, and 164.

In 1993, voters approved an amendment, now Art. 3, sec. 49-b of the Texas Constitution, authorizing up to \$750 million in general-obligation bonds for VLB loan programs, including \$500 million for the Veterans Housing Assistance Fund II created by the amendment. Voters amended the Constitution again in 1995 to authorize an additional \$500 million in bonds for veterans' housing programs.

Texas Constitution, Art. 3, sec. 49 prohibits state debt. It generally requires the Legislature to submit for voter approval proposals authorizing general obligation bonds backed by the state's credit, usually by constitutional amendment. Sec. 49-j limits annual state debt payable from general revenue to 5 percent of the annual average amount of nondedicated general revenue for the three preceding fiscal years. Some general obligation debt, like the veterans' land bonds, is paid with revenue from the programs the bonds support and thus is considered self-supporting.

In 1999, the 76th Legislature enacted SB 1509 by Truan, et al./B. Turner, authorizing the VLB to buy more than one tract of land at a time. The act also raised the ceiling on home mortgage loans from the Veterans' Housing Assistance Fund from \$45,000 to the maximum amount allowable for a similar home mortgage loan through the U.S. Department of Veterans Affairs, currently \$150,000 per mortgage.

### **Digest**

Proposition 7 would amend Texas Constitution, Art. 3, sec. 49-b to allow the Legislature to authorize the VLB to issue up to \$500 million in general-obligation bonds to benefit the Veterans Housing Assistance Fund II. The amendment also would permit using funds from the veterans' land and housing assistance programs to plan, design, operate, maintain, enlarge, or improve veterans' cemeteries.

The ballot proposal reads: "The constitutional amendment authorizing the Veterans' Land Board to issue up to \$500 million in general obligation bonds payable from the general revenues of the state for veterans' housing assistance and to use assets in certain veterans' land and veterans' housing assistance funds to provide for veterans cemeteries."

## Supporters say

Proposition 7 would provide much-needed support to meet the increasing demand for veterans' home mortgage loans, which have grown in popularity since the Legislature raised the cap on these loans in 1999. The \$500 million in general obligation bond authorization — along with an increase in the cap to \$1 billion in VLB revenue bonds, as authorized by HB 2453 by Berman/Shapleigh — should meet the anticipated loan demand for the next two years.

VLB programs have grown because of lower interest rates, special discounts, and expanded eligibility for veterans and their surviving spouses. Since 1999, the VLB has made more than 7,600 loans totaling more than \$826 million. More than 47,500 loans totaling almost \$2 billion have been made since the program's inception.

Proposition 7 also would provide bond funding for loans that pose almost no financial risk for the state. The \$500 million would not count toward the constitutional ceiling on state debt. Prudent loan and investment practices have made the veterans' programs self-sufficient, and veterans using the program, rather than the taxpayers of Texas, would be responsible for retiring the debt and paying the interest. The foreclosure rate on VLB loans is very low — about 0.5 percent for both the land and housing programs. The total rate for loans in foreclosure or more than 60 days delinquent is about 2.9 percent, well below the national average for these types of loans. Foreclosed property is sold, and the proceeds remain in the program.

Proposition 7 also would give the VLB the financial flexibility to develop a state veterans' cemetery program. More than 1.6 million Texas veterans receive relatively few state benefits for the sacrifices they have made in serving their country. National veterans' cemeteries are located in San Antonio, Houston, Dallas, and El Paso, but no more national cemeteries are likely to be located in Texas. A state veterans' cemetery system would serve the large number of Texas veterans who live outside those metropolitan areas.

## Opponents say

Proposition 7 would increase state debt at a time when many needed state programs are not funded adequately. As popular and worthy as veterans' housing programs may be, they should not be granted special budgetary status apart from other programs funded through the general revenue budget. Voters should be wary of authorizing more state debt.

Texas veterans deserve aid, but they already are eligible for many benefits, including federal Veterans' Administration housing loans, college tuition assistance, and hiring preference for federal and state civil-service jobs. Regardless of need or income, veterans can obtain government-subsidized mortgages at interest rates lower than those available to other home buyers.

## Other opponents say

Voters should have been given the opportunity to approve \$1 billion in additional general-obligation bonds for the veterans' housing assistance program, as provided in the House-passed version of HJR 82. That additional authorization would have enabled the VLB to meet growing demand for the program and would not have compromised the fiscal soundness of the program.

Also, the proposition should have included authorization to use housing assistance programs' assets to pay for additional veterans' homes. The House-passed version of HJR 82 would have provided the state funding needed to match federal grants for veterans' homes or to fund the construction entirely if federal funds were not available. The availability of resources for veterans' homes is now uncertain. Texas should expand the services it provides for the 1.6 million veterans who live in the state, especially for the more than 500,000 who are older than age 65. Texas was one of the last states to build its own veterans' homes, and it may need up to 42 of these facilities to meet the needs of a rapidly aging veterans' population.

## Notes

As approved by the House, HJR 82 would have provided authorization for \$1 billion in additional general obligation revenue bonds and would have authorized use of veterans' land and housing assistance funds to develop additional long-term care facilities for aged veterans.

# General obligation bonds for state agency construction and repair projects

(HJR 97 by Junell, et al./Ellis)

8

Proposition

Texas Constitution, Art. 3, sec. 49 prohibits state debt. It generally requires the Legislature to submit for voter approval proposals authorizing general obligation bonds backed by the state's credit, usually by constitutional amendment. Sec. 49-j limits annual state debt payable from general revenue to 5 percent of the annual average amount of nondedicated general revenue for the three preceding fiscal years.

The Texas Public Finance Authority (TPFA) is the state agency responsible for issuing bonds and financing the acquisition or lease of equipment on behalf of other state agencies. TPFA only may issue bonds for the acquisition or construction of a building for a state agency, other than an institution of higher education, if the Legislature has authorized the specific project or the maximum amount of bonded indebtedness that may be incurred by the issuance of the bonds.

## Digest

Proposition 8 would add Art. 3, sec. 50-f to the Constitution to allow the Legislature to authorize TPFA to issue and sell up to \$850 million in general obligation bonds and to enter into related credit agreements. Proceeds could be spent only for repair and construction projects authorized by the Legislature and administered by or on behalf of the following agencies, or for purchase of needed equipment by or on behalf of these agencies:

- General Services Commission;
- Texas Youth Commission;
- Texas Department of Criminal Justice;
- Texas Department of Mental Health and Mental Retardation;
- Texas Parks and Wildlife Department;
- Adjutant General's Department;
- Texas School for the Deaf;
- Texas Department of Agriculture;
- Texas Department of Public Safety;
- State Preservation Board;
- Texas Department of Health;
- Texas Historical Commission; or
- Texas School for the Blind and Visually Impaired.

TPFA would prescribe the form, terms, and denominations of the bonds, the interest they would bear, and the installments in which they were issued. The Legislature could set the maximum net effective interest rate on the bonds. The comptroller would have to create a separate account in the state treasury in which to deposit the bond proceeds.

Until the bonds were repaid, the first money coming into the treasury each fiscal year and not otherwise appropriated by the Constitution would have to be appropriated to

pay the principal and interest on bonds that matured or came due during that year. The sinking-fund amounts left over from the previous fiscal year would have to be used to reduce the amounts appropriated for making these principal and interest payments. Once the bonds were approved by the attorney general, registered by the comptroller, and delivered to purchasers, they would be incontestable general obligations of the state.

The ballot language reads: “The constitutional amendment authorizing the issuance of up to \$850 million in bonds payable from the general revenues of the state for construction and repair projects and for the purchase of needed equipment.”

### **Supporters say**

Using bonds for capital improvements would be an appropriate way to stretch state dollars to pay for long-term projects, such as for construction and repair. In the current budget cycle, most of the agencies that the proposed bonds would benefit submitted large exceptional-item requests for crucial repair and maintenance projects that could not be addressed fully because of the limited availability of funds. None of these agencies would receive funds for these purposes without the funding provided through the proposed bonds.

Proposition 8 would allow the Legislature to authorize the issuance of the bonds and to appropriate the bond proceeds. This would maintain legislative control and oversight of how and when the agencies spent the proceeds. By not specifically naming projects in the proposed amendment, the Legislature would retain flexibility in how to use the funds, as the bond proceeds could be spent on any project at the named agencies.

General obligation bonds are appropriate for this large of a bond issue. Such bonds are not tied to a specific revenue stream, but rather are backed by the full faith and credit of the state. Because of this distinction, general obligation bonds carry a slightly better interest rate than revenue bonds. General obligation bonds, however, require a constitutional amendment authorizing their issuance, while revenue bonds do not. Bond issuances below \$100 million tend to be revenue bonds, and larger issuances tend to be general obligation. Since Proposition 8 would authorize \$850 million in bonds, general obligation bonds and voter approval would be more appropriate.

### **Opponents say**

Proposition 8 would be a blank check for the Legislature — voters would have no say over how the bond proceeds were allocated or spent. Because the proposition is worded as a vote on the entire bond issue, voters would have no clear indication of how the money would be allocated among individual projects.

Bonds should not be issued to finance repair projects. Repairs are a predictable cost for which agencies can and should budget. The state has failed to keep up with repairs

even during prosperous years. Furthermore, unlike construction projects, repairs have too short of a useful life to justify incurring long-term debt to finance them. The fact that available revenues are more limited this biennium is no excuse for incurring debt.

Some of the agencies that could receive bond proceeds under Proposition 8 have a questionable history of managing their finances. For example, the Sunset Advisory Commission recently found that both the General Services Commission and Texas Parks and Wildlife Department could do a better job of managing their construction and repair projects. Similarly, the Legislature authorized bonds for the Texas School for the Deaf (TSD) to build facilities in 1989, and for a variety of reasons — some not within TSD's control — TSD ran significantly over budget on those projects.

## Notes

HB 3064 by Junell/Ellis, which would take effect if Proposition 8 is approved, would authorize TPFA to issue the proposed bonds. The Legislative Budget Board estimates that debt service on the \$850 million in bonds would cost the state \$34 million in fiscal 2002-03, assuming that TPFA issued the bonds according to the following schedule: \$265 million in December 2001, \$290 million in October 2003, and \$295 million in October 2005, at 6 percent interest with level principal payments over 20 years.

If Proposition 8 is approved, SB 1 by Ellis/Junell, the general appropriations act for fiscal 2002-03, has assigned \$278.1 million in general-obligation bond funding for the following projects:

- Texas Youth Commission — \$10.8 million for construction and repair at 15 sites;
- Texas Department of Criminal Justice — \$80 million for construction and repair of facilities;
- Texas Department of Mental Health and Mental Retardation — \$35 million for maintenance and system renewal;
- Texas Parks and Wildlife Department — \$36.7 million for repairs at four sites;
- General Services Commission — \$16.5 million for repairs and compliance programs;
- Department of Public Safety — \$18.5 million for grants to local law enforcement agencies for audio/video equipment to comply with SB 1074, banning racial profiling;
- Texas School for the Deaf — \$7.1 million for construction and repair of facilities;
- Texas School for the Blind — \$5.1 million for construction and repair of facilities;
- Adjutant General's Department — \$3 million for repair and maintenance of nine facilities;
- Texas Department of Health — \$33.9 million for hospital construction;
- Texas Department of Agriculture — \$45,000 for repairs at Giddings Seed Laboratory;
- General equipment acquisition — \$31.5 million.

Gov. Rick Perry vetoed \$45 million in bond funding to the Texas Historical Commission for county courthouse renovations.

## Canceling special election if legislative candidate is unopposed

(HJR 47 by Madden, et al./Shapiro)

Under Texas Constitution, Art. 3, sec. 13, when a vacancy occurs in either house of the Legislature, the governor or the person exercising the governor's power must call an election to fill the vacancy.

Under Election Code, chapter 2, a political subdivision other than a county (cities, school districts, and certain water districts) that requires write-in candidates to declare their candidacy formally may cancel a general election and declare the unopposed candidate the winner if there are no declared write-in candidates, no opposed candidates, and no propositions on the ballot. This authority does not extend to special elections to fill vacancies in the Legislature.

### Digest

Proposition 9 would amend Art. 3, sec. 13 by authorizing the Legislature to cancel a special election for a vacancy in the Legislature if only one person qualified and declared a candidacy in the election.

The ballot proposal reads: "The constitutional amendment authorizing the filling of a vacancy in the legislature without an election if a candidate is running unopposed in an election to fill the vacancy."

### Supporters say

Proposition 9 and its enabling legislation, HB 831 by Madden, et al./Shapiro, would spare the state and counties the unnecessary expense and administrative burden of holding special elections to fill vacancies in the Legislature when candidates are unopposed. For example, Denton County spent more than \$12,000 in May 2000 for a special election in which only one candidate ran to replace the late Rep. Ronny Crownover. In political subdivisions other than counties, unopposed candidates routinely take office without unnecessary special elections.

Since the Texas Constitution sets forth the manner in which legislative candidates are elected to office and requires that senators and representatives be elected, any proposal to cancel a special election to fill a vacancy in the Legislature requires a constitutional amendment as well as a change in the Election Code.

This amendment would not discourage anyone from running for office, nor would it interfere with anyone's voting rights. If a candidate is unopposed, the race essentially is decided already. Anyone who wants to become a candidate after the close of the filing period has ample time in which to declare a write-in candidacy, in which case the election would not be canceled. Under current law, if the ballot contains only a single unopposed candidate, the election becomes an expensive but required formality.

HB 831's requirement that write-in candidates in a special legislative election declare their candidacy formally would ensure that write-in votes would be counted only for those interested in serving. According to the Secretary of State's Office, special legislative elections are among the few in which current law allows write-in votes for undeclared candidates to be counted. In most elections, candidates not on the ballot must declare their candidacy to have write-in votes counted.

In January 2000, write-in votes for a scattering of persons in a special legislative election in Bexar County forced a runoff election between the only two candidates who had filed in the election because the vote between them was so close that neither received a majority. Bexar County had to pay about \$32,000 for the runoff election. Had there been a requirement that write-in candidates declare their candidacy and no one had declared, these votes would not have been counted, and there would have been no need for a runoff election.

### **Opponents say**

Canceling special elections for legislative vacancies would deprive voters of their right to vote for candidates of their choice and of knowing who their elected leaders are. It also would deprive candidates of the opportunity to gain visibility by campaigning. Even if voter turnout is low because there is only one candidate on the ballot, those who take the time to become informed and vote are exercising their right to endorse the candidate they want to represent them. The privilege of voting is important and should not be taken lightly, even for the sake of convenience or saving money. Also, restricting write-in candidates, as would be required if HB 831 became law, would deprive voters of the opportunity of voting for the person of their choice, regardless of whether the person had made a formal declaration of candidacy.

### **Notes**

If voters approve Proposition 9, the enabling legislation, HB 831, also will take effect, authorizing the secretary of state to declare an unopposed candidate the winner in a special election to fill a legislative vacancy if there are no opposed candidates, no propositions on the ballot, and no declared write-in candidates. Write-in candidates in special elections to fill legislative vacancies would have to declare their candidacy with the secretary of state. Any votes received for a write-in candidate not on the list of write-in candidates could not be counted.

## **Authorizing ad valorem tax exemption for goods in transit**

**(SJR 6 by Duncan, et al./Gallego)**

Texas Constitution, Art. 8, sec. 1-j and Tax Code, sec. 11.251 exempt from ad valorem taxation so-called “freeport” property that is in the state temporarily. Eligible “freeport” property includes goods, wares, merchandise, and other tangible personal property, including aircraft and aircraft parts used for maintenance or repairs by certificated air carriers, and ores, other than oil, natural gas, and other petroleum products. To be eligible for the freeport exemption, property must be acquired in or imported into Texas for export; detained for assembly, storage, manufacturing, processing, or fabrication; and shipped out of state no later than 175 days after acquisition or importation. Local governments were allowed to elect before April 1, 1990, to overrule the exemption and tax such property, although they retain the option of deciding permanently to rescind their decision to tax.

### **Digest**

Proposition 10 would add Art. 8, sec. 1-n to the Constitution to authorize the Legislature to exempt from ad valorem taxation property that is stored temporarily en route to another location in Texas or outside the state. Exempt property would include the same types of goods and products eligible for the freeport exemption. The property would have to be acquired in or brought into Texas and stored at a location not owned or controlled by the property owner for not more than 270 days after acquisition or importation. (Unlike “freeport goods,” which may be exempt if exported within 175 days (Art. 8, sec. 1-j), these “goods in transit” would not have to be shipped out of state to qualify for the new exemption.)

Governing bodies of taxing jurisdictions could choose to tax goods in transit if another law did not exempt the property. A governing body would have to hold a public hearing before acting to do so. Owners of property eligible for the freeport exemption could apply for the goods-in-transit exemption if the Legislature enacted it, subject to the decisions of their local taxing entities. However, an owner receiving the goods-in-transit exemption could not claim the freeport exemption for the same property. The amendment would take effect January 1, 2002.

The ballot proposal reads: “The constitutional amendment to promote equal tax treatment for products produced, acquired, and distributed in the State of Texas by authorizing the legislature to exempt from ad valorem taxation tangible personal property held at certain locations only temporarily for assembling, manufacturing, processing, or other commercial purposes.”

### **Supporters say**

Proposition 10 would be an important first step in helping Texas regain its share of lucrative warehousing and distribution markets. Voter approval would allow the Legislature to act to stem the loss of customers and jobs to other states.

Since 1989, the “freeport amendment” has offered only limited tax relief. Because it applies only to interstate freight, it discriminates against Texas goods bound for in-state destinations. As of 1999, only 219 taxing entities allowed the exemption, according to the Comptroller’s Office. This patchwork tax policy has resulted in a lack of uniformity in tax appraisal and administration, exacerbated by different tax treatments for various agricultural products.

Although some taxing entities have used the freeport exemption to attract out-of-state business, this provision actually has penalized the Texas warehouse industry. Some developers persuaded rural areas with lower operating costs and no warehouses to attract warehouse development by offering the exemption. This forced existing warehouses in developed areas without the exemption to lower their prices in order to compete. Surrounding states offer much more favorable inventory tax treatment — for example, Oklahoma fully exempts all freeport goods with no local “opt-out” option, and New Mexico exempts inventories with few exceptions. Recognizing their competitive advantage, nearby states began enacting laws and promoting policies to help their warehouse operators attract new business. Many manufacturers began storing their products outside Texas, costing the state an estimated 27,000 jobs.

The predicted losses in state revenue caused by increased state reimbursement to school districts due to reduced local revenue from the goods-in-transit exemption are exaggerated; such losses should not exceed \$11 million. In fact, many school districts, along with other taxing entities, might choose to opt out of granting the exemption and continue to tax such property. Also, the Legislative Budget Board’s (LBB) fiscal-note projections do not take into account the greater sales tax revenue that would accrue from increased warehousing activity. Dynamic modeling performed by The Perryman Group in 2000 projected a potential annual income gain of \$540 million and almost 14,000 new permanent jobs.

Voter approval of this amendment would mark an important change in state tax policy. The Legislature could consider enabling legislation to implement the proposed exemption in 2003 or when the state’s revenue outlook improves sufficiently.

## Opponents say

Any measure that could erode local tax bases further would be imprudent, especially in a time of revenue shortfall and fiscal uncertainty. Since 1994, state and local tax revenues have declined as a percentage of personal income. Creating a new exemption would result in substantial costs to the state as well as to local governments. The state should impose a moratorium on new tax exemptions until the efficiency and appropriateness of existing exemptions are determined.

The looming crisis in school finance makes Proposition 10 all the more ill-advised. Many school districts have reached the statutory rate cap of \$1.50 per \$100 of assessed valuation for maintenance and operations taxes, and many more districts are approaching the cap. LBB estimates that if all taxing entities granted the goods-in-transit exemption, the required state reimbursements to school districts for revenue losses in fiscal 2003 would total \$36 million in fiscal 2004. Those reimbursements would compensate districts for

declines in taxable property values, depending on wording of the enabling legislation. This could be particularly burdensome for property-wealthy districts subject to revenue recapture under the so-called “Robin Hood” system. Also, nonreimbursable losses to cities and counties in fiscal 2003 would total \$7.8 million and \$11.2 million, respectively, according to LBB. Losses would continue to escalate through 2006 and beyond.

Allowing local governments to “opt out” of the goods-in-transit exemption would perpetuate existing problems with tax administration. Business and industry likely would relocate to exempt areas, creating the same tax-policy patchwork that plagues the freeport exemption. The adverse economic consequences could be disproportionately detrimental to small and rural communities that depend on a few large businesses.

Texas already has an attractive business climate. The proposed amendment unfairly would shift the property tax burden from certain taxpayers who happen to own goods-in-transit property to others. It would show favoritism by subsidizing a single, relatively small industry, yet produce little positive “ripple effect” benefiting the state economy. The impact of economic losses from across-the-border migration of storage facilities is overstated. Realistically, such out-of-state facilities can serve efficiently only markets in Dallas-Fort Worth, El Paso, and perhaps Houston. Texas should not be lured into a tax-break war with other states for dubious returns to address what amount to regional problems.

Criteria for assessing the new exemption would complicate rather than simplify the appraisal process. Determining property owners’ intent could be difficult, because ambiguity in the language might allow them to claim exemptions for goods that arguably are not meant for shipment. More tax law complexity simply raises costs for taxpayers.

## **Other opponents say**

Because the 77th Legislature enacted no enabling bill, the tax exemption for goods in transit proposed by Proposition 10 could not take effect for at least two years, even if voters approve it. Voters will be in the same quandary as in 1999, when they approved the amendment providing a tax exemption for automobiles leased for personal use, which had no immediate effect. It would be better to wait and adopt both the amendment and the enabling legislation simultaneously.

## **Notes**

The 77th Legislature did not enact enabling legislation for SJR 6. SB 174 by Duncan passed the Senate but died in the House Calendars Committee. The companion proposal, HJR 25, and its enabling legislation, HB 438, both by Gallego, died in the House Ways and Means Committee.

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# Allowing school teachers to receive pay for serving on local government boards

(HJR 85 by Bosse/Lindsay)

**11**  
Proposition

Texas Constitution, Art. 16, sec. 40 prohibits a person from holding more than one civil office for compensation. The many exceptions include certain offices such as justice of the peace, county commissioner, and notary public, as well as members of the military, the reserves, and military retirees. State employees and others, such as current or retired public school teachers, who receive all or part of their compensation directly or indirectly from state funds, may serve on the governing bodies of school districts, cities, towns, or other local government bodies, provided that they receive no salary for such service.

## Digest

Proposition 11 would amend Art. 16, sec. 40 to allow a school teacher, a retired teacher, or a retired school administrator to receive pay for serving as a member of the governing body of a school district, city, town, water district, or other local government.

The ballot proposition reads: “The constitutional amendment to allow current and retired public school teachers and retired public school administrators to receive compensation for serving on the governing bodies of school districts, cities, towns, or other local governmental districts, including water districts.”

## Supporters say

Proposition 11 would remove an antiquated prohibition that makes it difficult for teachers to serve as members of the governing boards of local governmental bodies. Those who wish to serve must give up any salary or other compensation normally provided for hours of public service. Many people who have run for these offices have been unaware of this prohibition and later have been forced to repay their salaries.

Allowing education professionals to earn salaries for serving on local government boards would increase the pool of qualified candidates for these offices and would allow more teachers and retired educators to serve their local communities. There is no reason to prohibit teachers from receiving two public paychecks for doing two entirely different jobs. By definition, teachers are well educated, and many already are active in their communities, yet the current restriction discourages them from serving on local governing boards that offer compensation.

Serving as a teacher and on a local government board are complementary activities, just as serving in a private-sector job and on a government board are complementary. In many cases, teachers already serve voluntarily on local governing boards. There is no reason to believe that they would not work as hard once they could be paid for their service.

Proposition 11 properly would continue to prohibit teachers and retired educators from holding state offices, but would allow them to receive compensation for serving on local

government boards. This would ensure that teachers and retired educators were not treated differently from other people who want to serve their local communities.

Local governing boards rarely pay a living wage and typically cover only expenses and other costs. People serving on these boards need other employment to earn a living. If local government officials were paid on par with private-sector employees, the public might have more reason to expect an official to give up the other position, regardless of whether it was a public or private-sector job.

State law and local policies address the issue of potential conflicts of interest and prevent local government board members from voting on or influencing discussions on any matter in which they have an interest. It is equally likely, if not more so, that a person working at a private business could have a conflict of interest while serving on a local board. However, a potential for conflict does not disqualify private-sector employees or business owners from serving or being paid. The same standards should apply to teachers, and there would be even less potential for conflict if retired teachers or school administrators were paid for their public service.

Proposition 11 is drawn more narrowly than SJR 26, which Texas voters defeated in November 1999. This proposed amendment would address only payment for service of current and retired education professionals on local government boards, rather than allowing all state employees to receive salaries for serving on these governing bodies.

## **Opponents say**

Good reasons exist for the constitutional prohibition against a person who is paid with taxpayer dollars holding more than one public position. When taxpayers are paying a person's salary, they expect that person's total commitment to the job. When a person accepts two offices, at some point those two offices will come into conflict as to the amount of time required to do each job well. Some city council and school board offices in major population centers amount to full-time positions.

Proposition 11 is an attempt to fix a nonexistent problem, because school districts and water districts typically do not pay their board members. All members of these boards already serve as volunteers. Many city and town council members receive no compensation or only token salaries for their service. These officials easily can waive receiving pay from the municipality.

Texas voters clearly rejected a similar proposition in 1999. They should not be asked so soon to vote again on a similar proposal.

## **Other opponents say**

The proposition should eliminate restrictions on all state employees who wish to hold government office, whether as a member of a local governing board or of the Legislature. State employees hold a position of employment, not an office requiring election or

appointment, so the dual office-holding restrictions should not apply to them at all. They at least should be paid the same as other officeholders.

## Notes

As filed, HJR 85 would have worded the ballot proposition to allow college professors, as well as school teachers, retired teachers, and retired school administrators, to receive pay for serving on a local government board. The House-approved version of HJR 85 would have limited the change to teachers serving on water district boards, but the Senate amended the proposal to include the governing boards of school districts, cities, towns, and other local governments as well.

In November 1999, voters rejected Proposition 5 (SJR 26 by Ratliff/Krusee), which would have allowed all state employees to be paid for service on local government boards.

# Eliminating duplicative and obsolete provisions from the Constitution

(HJR 75 by Mowery, et al./Shapiro)

The Texas Constitution originally was adopted in 1876. Since then, the Legislature has proposed 567 amendments, of which Texas voters have approved 390. Various provisions have been rendered obsolete by federal judicial decisions or enactments, repeat the same or similar language, or refer to programs and entities no longer in effect.

## Digest

Proposition 12 would remove, reword, or relocate many provisions of the Constitution, including:

- deleting provisions that divide senatorial districts by the number of qualified electors, rather than by population, and that prohibit counties from having more than one senatorial district;
- deleting references to repealed Art. 3, sec. 26a, regarding reapportionment of state representative and senatorial districts;
- requiring the Legislature to submit local fence laws and livestock regulations for approval by voters rather than by “freeholders” in the affected section of the state;
- making various references gender-neutral;
- deleting several “incumbent protection” provisions for judges, including one that expired in 1891;
- repealing Art. 7, sec. 9, which requires the creation of permanent accounts for property set aside for the benefit of four defunct institutions, the Lunatic, Blind, Deaf and Dumb, and Orphan asylums;
- deleting provisions regarding the disposition of receipts from state ad valorem taxes;
- deleting a provision that only “property taxpayers” are qualified to vote and relocating provisions that prohibit persons convicted of bribery, perjury, forgery, or other high crimes from voting or serving on juries;
- deleting duplicate oath-of-office provisions;
- relocating the authority of county commissioners to call an election to elect a tax assessor-collector or to designate the sheriff as assessor-collector in counties with populations of fewer than 10,000 people;
- eliminating a duplicate provision for when an elected or appointed officer of a home-rule city resigns that position when running for another office; and
- removing provisions for the election to abolish the office of constable in Reagan and Roberts counties and revising Art. 5, sec. 18(e) to reflect that the constable offices are abolished in Mills, Reagan, and Roberts counties, as previously approved.

Proposition 12 also would repeal and relocate sections of Art. 16 that:

- require the Legislature to prescribe the qualifications of grand and petit jurors and specify that grand and petit juries may include women;
- authorize the Legislature to pass fence laws;
- forbid the Legislature to pass a special law exempting, relieving, or discharging a person or group from a public duty or service required by general law; and

- authorize legislative appropriations for development and dissemination of information about Texas resources.

Temporary provisions of HJR 75 would:

- provide that any land held for the benefit of the Insane Asylum, Institute for the Blind, Deaf and Dumb Institute, and Orphans' Home be sold by the General Land Office for the benefit of education and that the money remaining in any permanent funds for those defunct institutions be transferred in equal shares to the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf by January 1, 2005;
- provide that reenactment of any provision of the Constitution for purposes of amendment does not revive a provision that may have been repealed impliedly by adoption of a later amendment; and
- specify that approval of Proposition 12 would not affect vested rights.

The ballot proposal reads: "The constitutional amendment to eliminate obsolete, archaic, redundant, and unnecessary provisions and to clarify, update, and harmonize certain provisions of the Texas Constitution."

## Supporters say

Proposition 12 would streamline the existing Constitution by deleting obsolete, inconsistent, and moot provisions, by relocating provisions to more logical places, and by renumbering provisions with duplicate numbering. A complete overhaul of the Constitution could result in an improved document but would involve making many substantive changes that need to be examined thoroughly. Rather than wait for the Legislature to adopt a complete rewrite, Proposition 12 would allow voters to update the current constitution and remove many of the unnecessary provisions that make it difficult to use.

One example of an obsolete provision that Proposition 12 would update is the requirement that state Senate districts be divided on the basis of "qualified electors" rather than of population. The Legislature, the Legislative Redistricting Board, and the courts have not used qualified electors as the population basis for drawing Senate districts since the one-person, one-vote standard was established by the U.S. Supreme Court decision in *Reynolds v. Sims*, 377 U.S. 533 (1964). No practical way exists to establish a database of qualified electors, which would have to exclude non-citizens, felons and others not eligible to vote from a list of adults older than 18 years of age. Minority groups that have a larger proportion of children under age 18 would be underrepresented if the qualified-electors standard were used. An attorney general's opinion (MW-350, May 30, 1981) determined that a Senate district plan based on qualified electors would be "unconstitutional on its face and inconsistent with the federal constitutional standard." Eliminating the qualified-electors standard for Senate districts simply would reflect current practice and the generally accepted legal standard.

Proposition 12 would permit the use of what now are "dead funds" to benefit Texans now needing those services. About \$592,000 is being held in four funds for the Insane Asylum, Institute for the Blind, Deaf and Dumb Institute, and Orphans' Home, and 160 acres of

public land remains in the accounts for Institute for the Blind and the Deaf and Dumb Institute. Since these accounts are mandated in the Constitution, the proceeds cannot be “swept” — or reallocated — into state general revenue accounts for current use. Proposition 12 would allow these assets to be transferred to the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf by January 1, 2005. The change also would help simplify the management of these accounts by the Comptroller’s Office and the General Land Office and would allow them to be used as originally intended.

All the proposed changes are relatively minor and noncontroversial. None of the revisions warrant separate propositions, and no one provision would justify rejecting the entire slate of changes.

## Opponents say

Rather than amend and repeal sections of an out-of-date constitution, it would make more sense to overhaul the document to make it a leaner, more responsive blueprint for government for the new century. The sheer volume of unnecessary provisions being removed by Proposition 12, following two similar revisions in 1997 and 1999, shows the need for a complete overhaul.

Because of the large number of changes in Proposition 12, some of the proposed revisions may not have been examined fully. Inadvertent changes or the repeal of certain sections could result in unintended consequences.

Potentially controversial or substantive changes may be hidden among less dramatic changes in this so-called “cleanup” amendment. One example is the elimination of “qualified electors” as the population basis for state Senate districts. No clear judicial precedent exists for rejecting the use of qualified electors as the basis for redistricting or for requiring total population as the only standard that must be used. Use of qualified electors as the standard for drawing Senate districts arguably meets the “one person, one vote” electoral equality requirement more accurately than does total population. Gov. William P. Clements, Jr. vetoed a Senate redistricting plan approved by the Legislature in 1981 in part because it was not based on qualified electors as required by the Texas Constitution, and other Senate redistricting plans have been challenged in court on the same basis, with no definitive ruling on the question.

## Notes

Texas voters approved similar “cleanup” amendments in 1997 (Proposition 4, HJR 104 by Mowery/Ogden) and 1999 (Proposition 3, HJR 62 by Mowery/Shapiro).

# Allowing school districts to donate old schoolhouses for historic preservation

(SJR 2 by Wentworth/Hilderbran)

**13**  
Proposition

School boards have no explicit authority to donate surplus school-district property to other entities. Texas Constitution, Art. 3, sec. 52 prohibits any political corporation or subdivision, including a school district, from lending its credit or granting public money or a thing of value to any individual, association or corporation. Education Code, chapter 11 outlines the powers and duties of the boards of trustees of independent school districts, including the authority to sell property.

## Digest

Proposition 13 would add Art. 7, sec. 4B to the Constitution to allow the Legislature to authorize a school district's board of trustees to donate district real property and improvements formerly used as a school campus for the purpose of preserving the improvements. Such an act of the Legislature would have to provide that before the school board could make the transfer, it would have to determine that the district did not need the property for educational purposes, that the improvements had historical significance, and that the transfer would further the preservation of the improvements.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to authorize the board of trustees of an independent school district to donate certain surplus district property of historical significance in order to preserve the property."

## Supporters say

During the late 1800s and early 1900s, rural landowners donated land and built one-room schoolhouses to educate their children. When the Gilmer-Aiken Act of 1949 required consolidation of school districts throughout the state, the old country schools were given to the new school districts free of charge. Many of the old schoolhouses no longer are being used as school facilities but still are considered surplus property of the districts. No taxpayer funds have been used on these schools since they were given to school districts 50 years ago. Most of the country schools have been used as community centers to hold meetings, elections, reunions, and weddings. Community organizations have maintained the old school buildings and have paid for all operating costs. However, because of constitutional restrictions, school districts may only sell, and cannot donate, surplus property, including old schoolhouses that would be preserved for community purposes.

The historic value of these sites is unquestioned. As the original locations of the first attempts at rural education in Texas, they add richly to the historic tradition of their communities. These sites are not suitable as future school locations and have no realistic value for any future use by the school districts.

School boards and communities are concerned with the long-term status, maintenance, and preservation of these historic sites. All parties involved want these properties to be in

the hands of groups dedicated to preserving these locations — whether another governmental entity (such as a city or a county) or a nonprofit organization. The continued availability of these properties as centers for rural community groups and gatherings is vital. This can best be accomplished by allowing school districts to pass the ownership to other groups.

## Opponents say

Rather than amend sections of an out-of-date state constitution every legislative session and ask the voters to approve piecemeal constitutional changes every few years to deal with special situations such as allowing school districts to donate old schoolhouses, it would make more sense to overhaul the document. The Constitution needs to be a leaner, more responsive document that would serve Texas as a blueprint for government in the 21st century.

## Notes

If voters approve Proposition 13, the enabling legislation, SB 116 by Wentworth/Hilderbran, also will take effect. It would authorize the board of trustees of an independent school district to donate certain surplus district property to a city, county, or nonprofit organization in order to preserve the property. The donated property would have to continue to be used as a community center for public purposes, such as youth or senior citizen activities, fundraising events for noncommercial groups, or educational or entertainment events. Ownership of the property would revert back to the district if the city, county, or nonprofit organization ceased using the property as a public community center or executed a document that attempted to sell the property.

# Authorizing ad valorem tax exemption for travel trailers

(HJR 44 by Flores/Lucio)

14  
Proposition

Under Texas Constitution, Art. 8, sec. 1(d), the Legislature may exempt from ad valorem taxation tangible personal property, except structures that are personal property used or occupied as residential dwellings and property held or used for the production of income.

Tax Code, subchapter B exempts various types of property from ad valorem taxation. Sec. 11.14(a) allows local taxing units to grant exemptions for non-income-producing tangible personal property, other than manufactured homes.

## Digest

Proposition 14 would amend Art. 8, sec. 1 to allow the Legislature to authorize taxing units other than school districts to grant property tax exemptions to owners of registered, non-income-producing travel trailers, regardless of whether the trailers were real or personal property. To be eligible for the exemption, a trailer would have to be registered in compliance with state law on January 1 of the applicable tax year. The proposed amendment would take effect January 1, 2002.

The ballot proposal reads: “The constitutional amendment to authorize the legislature to authorize taxing units other than school districts to exempt from ad valorem taxation travel trailers that are not held or used for the production of income.”

## Supporters say

Proposition 14 would provide uniformity in local taxation of travel trailers and would help promote the tourism industry by encouraging more people to visit the state for extended periods. Travel trailers have grown increasingly popular in Texas as recreational vehicles and winter homes, especially in Hidalgo and Cameron counties. The Texas Department of Transportation reports that more than 161,000 travel trailers were registered in Texas as of January 2001. According to the Texas Association of Campground Owners, about 70,000 “winter Texans” inhabit the Lower Rio Grande Valley each year, contributing more than \$165 million to local economies. Some of these residents live in their trailers six months out of the year, yet retain their mobility.

This influx of non-permanent residents has created uncertainty about the ad valorem tax treatment of travel trailers, compounded by two recent opinions of the attorney general. Opinion No. JC-0150 (December 8, 1999) upheld taxation of travel trailers as personal property. Opinion No. JC-0282 (September 7, 2000) held that the Tax Code does not preclude taxation of travel trailers as real property improvements if they have been affixed to someone else’s land.

Proposition 14 would clarify the property tax statutes and remove appraisal subjectivity by allowing local taxing entities to exempt travel trailers, regardless of whether they were real

or personal property. It would activate the provisions of the enabling legislation, HB 2076 by Flores/Lucio, which would define travel trailers as camper trailers or house trailer-type vehicles, whether affixed to real estate or not, that are less than 400 square feet in area and are designed primarily as temporary living quarters for travel, camping, recreational, or seasonal use, not as permanent dwellings.

Allowing local exemptions would promote uniformity in the appraisal process. Some appraisers do not appraise travel trailers as taxable property at all; some appraise them as real property, especially if they have carports or attached rooms; some appraise them as rental property; others appraise them as personal property. Compounding the problem are park-model trailers, somewhat similar to mobile homes. Such inconsistency of tax administration across counties is inequitable and detrimental to the state and local economies. It also has led to class-action lawsuits in Hidalgo and Cameron counties that the proposed amendment would end.

Proposition 14 also would promote tax fairness. Travel trailer owners already pay sales taxes when they buy their trailers. They also must pay annual vehicle registration fees to move or sell them. Taxing them again as property is excessive, if not double, taxation.

Property taxes on travel trailers hinder tourism and economic development in a region that sorely needs both. They also penalize a productive class of residents, most of whom are retired on fixed incomes and contribute positively to their adopted homes. Cameron County realizes about \$1 million in annual tax revenue from travel trailers, and Hidalgo County receives about \$1.4 million annually. But continued taxation, especially if not applied fairly and uniformly, would reduce the trailer population, as has occurred in other southwestern states. Recreational vehicle tourism is down 8 percent in the Valley, and half of those surveyed cited property taxes as their reason for leaving. The economic benefits of keeping these visitors in Texas would outweigh the benefits of the property tax revenue they generate.

Any exemptions would be optional on the part of local taxing entities. Also, the proposed amendment would not preclude local entities from making travel trailers taxable by enacting specific ordinances or orders. School districts, however, would be prohibited from exempting travel trailers, thus preventing any repercussions for school finance. Nevertheless, the Legislative Budget Board found that, even without banning school property-tax exemptions, the fiscal impact to the state and local governments would be insignificant because of the limited number of counties with immobile travel trailers. The owners of these trailers pay between \$100 and \$300 a year in property taxes on average, according to some local officials.

## **Opponents say**

Allowing property tax exemptions for travel trailers would create a special class of homeowner. Travel trailers may be occupied indefinitely and can have frame structures attached to them. If owners live in them, the trailers should be taxed as real property, like manufactured homes. Second homes are not inherently tax-exempt simply because they are mobile.

Creating another exemption would complicate the system rather than simplifying it. The attorney general has held that travel trailers are personal property and, if affixed to real estate, may be considered real property improvements. The problem is not the statutes themselves but the lack of guidance for appraisers in applying the statutes. The Legislature should define more specifically what constitutes a taxable residence, as it has done for manufactured homes. For example, park-model trailers — essentially mini-mobile homes — are not truly travel trailers because they are too wide to be towed by pickup trucks. Some trailer owners apply for homestead exemptions.

Proposition 14 would erode local tax bases. The Valley especially needs local tax revenue to expand and enhance basic services that are being stretched by a growing population. Semi-permanent residents who use those services should pay their fair share. Many winter Texans run small businesses or participate in cottage industries involving border communities. It is unfair to tax impoverished families living in substandard homes in nearby colonias while exempting affluent retirees living in trailers that cost as much as \$40,000 each.

Despite long-standing claims that such taxes inhibit tourism, the winter Texans keep returning. This shows that they choose their seasonal homes not on the basis of taxes but because of other factors such as the overall low cost of living, aesthetics of the landscape, and proximity to the Gulf of Mexico.

### **Other opponents say**

Proposition 14 would not give owners of travel trailers significant tax relief, because it would not allow the trailers to be exempt from school property taxes, which account for the bulk of the owners' tax bills. School districts should be allowed the same discretion as other taxing entities in regard to their tax policies.

### **Notes**

HB 2076, the enabling legislation for Proposition 14, defining which travel trailers could be tax-exempt, would take effect if voters approve the amendment.

# **Creating a highway bond fund and allowing state spending on toll roads**

**(SJR 16 by Shapiro/Brimer, et al.)**

Texas Constitution, Art. 3, sec. 52-b requires the Texas Turnpike Authority (TTA) or its successor agency to repay to the State Highway Fund any monies spent by the Texas Department of Transportation (TxDOT) on toll roads, toll bridges, or turnpikes. Art. 8, sec. 7-a dedicates three-fourths of net motor-fuel tax revenue to the highway fund (designated by the Comptroller's Office as Fund 6), which also receives revenue from motor-vehicle registration fees and sales taxes on lubricants. Fund 6 money may be appropriated only for specific highway-related purposes.

Art. 3, sec. 49 of the Constitution prohibits state debt, generally requiring that voters approve bonded indebtedness before the state may incur it. Sec. 49-j limits annual state debt payable from state general revenue to 5 percent of the annual average amount of nondedicated general revenue for the three preceding fiscal years.

## **Digest**

Proposition 15 would add Art. 3, sec. 49-k to the Constitution, creating the Texas Mobility Fund in the state treasury. The Texas Transportation Commission (TTC) or its successor would administer this revolving fund to finance acquisition, construction, maintenance, reconstruction, and expansion of state highways, including design and right-of-way purchases. Money in the fund also could be spent on public toll roads and other public transportation projects.

TTC could issue bonds pledged against the fund to be repaid from the fund balance. Bond proceeds could be used for refunding obligations and related credit agreements, creating reserves, and paying issuance costs and interest on bonds.

The Legislature could dedicate to the fund one or more specific revenue sources or portions of other state revenues, as long as the sources were not otherwise dedicated by the Constitution. Motor-vehicle registration fees and taxes on motor fuels and lubricants could not be dedicated to the fund. Dedicated revenue would be considered appropriated when received by the state, deposited automatically into the fund, and used as provided by Proposition 15 and any law enacted under its authority without any further appropriation.

The dedication of a specific source or portion of revenue, taxes, or other money could not be reduced, rescinded, or repealed unless two conditions were satisfied. First, the Legislature by law would have to dedicate a substitute or different source that the comptroller projected to be of equal or greater value than the dedicated source. Second, the Legislature would have to authorize TTC to guarantee payment of any bonds, notes, other obligations, or credit agreements by pledging the state's full faith and credit if dedicated revenue were insufficient to cover the payment. If TTC took such action and dedicated revenue was insufficient, the first revenue deposited into the state treasury not otherwise dedicated constitutionally would be appropriated to pay principal and interest on the obligations or agreements, less any fund amount available for payment.

If approved by the attorney general, obligations and credit agreements issued in conjunction with the fund would be considered incontestable. Judicial enforcement would be delegated to a Travis County district court.

The fund's obligations and credit agreements would not be included in computing the constitutional limit on state debt under Art. 3, sec. 49-j, except to the extent that the comptroller projected that general revenue would be needed to pay the amounts due should TTC exercise its authority to pledge the state's full faith and credit or that money were dedicated to the fund from an unspecified source.

Proposition 15 also would amend Art. 3, sec. 52-b to authorize TxDOT to lend or grant money for acquisition, construction, maintenance, or operation of turnpikes or toll roads and toll bridges. The amendment would repeal the constitutional requirement to repay Fund 6 from tolls or other turnpike revenue.

The ballot proposal reads: "The constitutional amendment creating the Texas Mobility Fund and authorizing grants and loans of money and issuance of obligations for financing the construction, reconstruction, acquisition, operation, and expansion of state highways, turnpikes, toll roads, toll bridges, and other mobility projects."

## Supporters say

Proposition 15 would establish an innovative mechanism for stretching state highway-funding dollars to build badly needed highways sooner. Texas' traditional "pay-as-you-go" approach to highway finance no longer is viable. The state's phenomenal population growth has led to more vehicle-miles traveled, greater traffic congestion, clogged border crossings, deficient rural roads, and many unsafe bridges. Demand has far outstripped capacity while spending has lagged. Texas never will catch up with demand if it does not prepare itself to innovate, as allowed by Proposition 15.

Highways are the only major capital projects for which the state does not borrow money by issuing bonds. That policy no longer is defensible in the face of spiraling needs, lost economic opportunities, and reduced quality of life. Cities and counties routinely finance street and road projects with bonds. There is no good reason why the state should not avail itself of this financing tool as well, subject to appropriate constraints.

The Texas Mobility Fund would supplement federal and state highway revenue without jeopardizing either. It would provide both flexibility and structure, allowing spending on a variety of transportation projects while keeping the fund balance secure. The balance would be used primarily to leverage highway bonds, enabling projects to begin sooner and reducing the impact of construction inflation. The interest earned would generate money for even more projects.

It would be up to future legislatures to dedicate revenue to the fund, either through greater efficiencies, increased appropriations, or new sources. However, it is important to establish the fund now as a policy statement until adequate funding can be obtained.

While theoretically Proposition 15 could allow issuance of general obligation bonds backed by general revenue, as opposed to revenue bonds backed by an as-yet undetermined revenue source, such a scenario is improbable. The provision in the amendment requiring that general revenue be used to cover bond debt service if other revenue sources are insufficient is designed to protect investors in the unlikely event of a potential default. The enabling legislation, SB 4 by Shapiro/Brimer, requires that the mobility fund contain at least 110 percent of the money necessary to pay principal and interest on all obligations issued each year. Therefore, it is highly unlikely that the mobility fund ever would become overextended and require general revenue to pay debt service on the bonds.

The stipulation in Proposition 15 that revenue dedicated to the mobility fund automatically be appropriated for purposes of the fund is not unprecedented. The Legislature appropriated money to many state agencies in that manner prior to a change in policy beginning in the 1980s. The goal is to ensure investors that money earmarked for highway bonds will be there by preventing the Legislature from “raiding” the fund by appropriating for non-highway purposes the revenue dedicated to the fund before it reaches the fund. The Legislature already delegates spending decisions to TTC in an effort to depoliticize the highway project-selection process. The amendment merely would place that sound policy in the Constitution as it pertains to the mobility fund.

Allowing the state to spend money up front on toll roads would hasten construction of much-needed highway projects. Forgoing repayment to TxDOT of state funding for toll roads would alleviate the double-edged problem most new toll projects face, that of two liens — one to TxDOT and the other to bondholders. Providing toll equity — shorthand for the value of the state’s unreimbursed investment in toll projects — would alleviate some of the burden of capital outlay for toll-road startup costs. This would make toll projects more attractive to investors, accelerate debt retirement, and hasten production of toll revenue.

Making it possible for projects to proceed as toll roads, rather than be financed conventionally, also would reduce contributions by local governments, which eventually would derive even more benefits from additional projects built in their areas with revenue generated from toll roads. Toll equity would free more state dollars for other projects because the state’s spending share of a toll project would be much less than if it paid entirely for the same project without tolls. This also could mean more money spent overall in certain areas when the value of toll projects is combined with conventional TxDOT spending.

Four potential toll projects being planned by TTA for Central Texas likely would benefit the most from the innovative financing proposed by Proposition 15. Three other prospective projects (two in San Antonio and one at South Padre Island) also could benefit, as well as five projects being planned in Dallas/Fort Worth by the North Texas Tollway Authority and five projects planned by the Harris County Toll Road Authority.

Taxes pay for many roads that some motorists never use. Toll roads make sense as alternative routes to high-traffic areas, available for a nominal user fee. However, tollways never will replace non-toll roads; free routes always will exist. Any plan that provides more money for highway construction while retaining state fiscal control would benefit all motorists.

**Opponents say**

Borrowing money by issuing bonds would make highways more expensive in the long run because of debt service, underwriting, and issuance costs. This would drain precious resources from the task of providing transportation efficiently and would encumber revenue that otherwise could be used on other projects. Bonding would not generate new money for highways; it merely would reallocate it and tie it up for the future. Overcommitment would limit Texas' ability to meet unforeseen needs. The state lacks the resources to make bonding viable soon enough to have a significant impact on Texas' transportation crisis. The Legislature either should find sufficient money in general revenue or should increase the gasoline tax, the closest thing to a user fee for all motorists.

Toll roads represent double taxation. Motorists already pay for highways at the gasoline pump, vehicle registration counter, and at auto supply retailers. They should not have to pay for highways again when they exercise their right to travel on them.

The constitutional prohibition against paying for toll roads with non-toll revenue remains sound. If tolls alone are insufficient to undertake and sustain a project, it should not be built as a toll road. Tolls are supposed to be high enough only to pay for the toll roads and their financing. The proposed amendment's second piece of enabling legislation, SB 342 by Shapiro/Alexander, would allow excess toll revenue to be transferred to the new mobility fund. This would create an incentive to turn toll projects into "cash cows." Users of toll roads should not be expected to subsidize other highways.

The amendment could create a potentially open-ended draw on general revenue to pay for highway bonds if dedicated revenue in the fund were insufficient to pay the principal and interest. There is nothing in Proposition 15 itself that would limit the amount of bonds that could be issued as long as general revenue or some other source were available to cover any shortfall in revenue dedicated to the fund. It also is unclear whether the language in the amendment only applies to an unforeseen deficit. This could encourage the deliberate issuance of more bonds than the revenue dedicated to the fund alone could cover.

Proposition 15 would undermine legislative oversight by appropriating automatically to the mobility fund any revenue dedicated to the fund. The revenue could be used as provided by the amendment and the enabling law "without further appropriation" by the Legislature. This rare bypassing of legislative control of a treasury-based fund effectively would delegate spending authority to TTC. The Legislature would have to enact statutes to direct, preempt, or change any TTC spending decisions because the amendment would preclude lawmakers from doing so through the appropriations process.

**Other opponents say**

It would be pointless to create a fund with no revenue, not unlike opening a bank account with no deposit. The Legislature should postpone this idea until it is prepared to pay for it. Texans need more money for roads now, not the legislative equivalent of a promissory

note. Borrowing against an almost-sure thing, such as federal highway funds, would provide a quicker and more meaningful infusion of capital than waiting for a better economy to create a budget surplus or for a consensus to form around a politically sensitive tax hike, either of which could take years to materialize, if ever.

Even if Texas' toll roads increased in number, they never would provide enough revenue to reduce significantly the huge number of other transportation projects Texas needs to build. SB 342, one piece of enabling legislation that would take effect if the voters approve Proposition 15, would turn the original toll equity concept on its head — rather than the state subsidizing toll roads, toll roads would be asked to subsidize the state highway program. In fairness, toll revenue at least should be dedicated to more toll roads.

## Notes

If voters approve Proposition 15, then SB 4 by Shapiro/Brimer, creating the Texas Mobility Fund, and SB 342 by Shapiro/Alexander, setting forth procedures for TxDOT's participation in toll projects, also would take effect.

SB 4 would allow TTC to issue obligations to pay for all or part of the cost of building, rebuilding, acquiring, and expanding state highways with a useful life of at least 10 years. TTC also could issue obligations to finance state participation in paying part of the costs of publicly owned toll roads and other public transportation projects that the commission determined to be in the best interests of the state in improving mobility. SB 4 would cap bond maturities at 30 years.

The mobility fund would have to contain at least 110 percent of the money necessary to pay principal and interest on all obligations issued each year. Subject to this limit, TTC could guarantee payment of all obligations by pledging the state's full faith and credit in the event that revenue dedicated to and on deposit in the fund were insufficient. TTC could issue no obligations until TxDOT had developed a strategic plan detailing proposed expenditures and expected benefits to the state. To the extent that money was on deposit in the fund in excess of that required to pay all obligations of the fund, TTC could use the money for any purpose for which obligations could be issued.

SB 342 would allow TxDOT to allocate up to 30 percent of its annual federal highway spending authority (currently about \$600 million a year) to toll projects. It also would authorize TTC to create regional mobility authorities to build, maintain, and operate turnpikes. The authorities annually would determine if they had surplus revenue from turnpike projects that exceeded debt service and operation, maintenance, or expansion costs. They could use the surplus revenue by reducing tolls, spending it on other regional transportation projects, or transferring it to the Texas Mobility Fund. TTC could convert a segment of the free highway system to a turnpike project and transfer it to a regional mobility authority to be operated as a toll road. SB 342 also would abolish the Texas Turnpike Authority board and would transfer to the mobility fund all unspent and unobligated appropriations and other monies under the board's control, estimated at \$2.3 million as of the end of fiscal 2001.

# Shortening the waiting period for home improvement liens and allowing homestead liens for manufactured homes

(HJR 5 by Solomons/Shapleigh)

**16**  
Proposition

Texas Constitution, Art. 16, sec. 50 protects a homestead from forced sale for the nonpayment of debt secured by the property, unless the debt is one of the specified exceptions to the homestead protection. Among the exceptions are all or part of the purchase money for the homestead and debt incurred for work and material used in improving the homestead, subject to certain conditions. A contract for such improvements must be in writing and signed by the owner and the owner's spouse and must be executed at the office of an attorney, a title company, or a third-party lender who makes the loan for the work. The contract cannot be executed until 12 days after the homeowner applies for credit. An exception to this waiting period allows immediate repairs to conditions that materially would affect the health and safety of a resident of the homestead. Also, under the federal Truth in Lending Act, the homeowner has an additional three days to rescind the work contract after it is executed.

When buyers purchase manufactured housing, it already may be permanently attached to the real property on which it sits or it may be purchased separately and attached later. The distinction is significant for how any debt on the purchase may be secured. The 76th Legislature in 1999 amended Property Code, chapter 62 (HB 1086 by Solomons/Shapleigh), seeking to allow buyers who incur debt in buying manufactured housing to convert the lien to a debt also secured by the real property after the home is attached permanently. However, an attorney general's opinion (Opinion No. JC-0357, March 27, 2001) interpreting this statute determined that when a manufactured home is bought separately, the lien securing the purchase price of the manufactured home cannot extend to the homestead land on which the home is attached. Unless the home already is attached to the homestead real property at the time of purchase, the lien is not for the "purchase price" of the homestead property and, therefore, does not fall under one of the specific exceptions to forced sale for debt listed in Art. 16, sec. 50. A lender typically will not agree to use homestead property as collateral for debt unless the lender can foreclose in case of default.

## Digest

Proposition 16 would amend Art. 16, sec. 50 of the Constitution by reducing from 12 days to five days the period that must elapse before a homeowner or the homeowner's spouse may execute a contract for improvements to the homestead in order for a lien on the homestead to attach.

Proposition 16 also would expand the list of exceptions to the protection against forced sale of a homestead for payment of debt. It would add conversion and refinance of a lien on personal property secured by a manufactured home to a lien on real property. Included in this lien would be the refinance of the purchase price of the manufactured home, the cost of installing the home on the real property, and the refinance of the purchase price of the real property. The amendment would take effect January 1, 2002.

The ballot proposal reads: “The constitutional amendment prescribing requirements for imposing a lien for work and material used in the construction, repair, or renovation of improvements on residential homestead property and including the conversion and refinancing of a personal property lien secured by a manufactured home to a lien on real property as a debt on homestead property protected from a forced sale.”

### **Supporters say**

Proposition 16 is needed because 12 days is too long for a homeowner to have to wait before beginning needed home renovations or repairs, especially considering the additional three-day right of rescission under federal law. A 12- to 15-day wait creates a burdensome and inflexible delay in the already complicated process of home renovation. No other type of loan requires a 12-day waiting period. A five-day waiting period would be a sufficient “cooling off” period to protect homeowners without inconveniencing them unduly.

This amendment would not remove other provisions designed to protect homeowners from high-pressure sales tactics. For example, it would not change requirements such as those separating the lending process from the process of contracting for repairs or renovations, nor those requiring that the work contract be signed at a neutral third party’s office instead of at the home. It also would leave intact the three-day right to rescind.

Proposition 16 also would ensure that owners of manufactured homes not only could convert their titles when they permanently attached their manufactured homes to land but also could convert their liens on personal property to liens on real estate. Converting personal property liens to purchase-money liens on their homesteads would save these homeowners substantial amounts of money. Purchase-money liens for real estate typically carry much lower interest rates because they are secured by homestead property. The proposal also would help homeowners by allowing a title insurance company to insure the real property title on the manufactured home, which is not possible under current law.

The Legislature had sought to make this change by statute. However, the attorney general in Opinion No. JC-0357 interpreted narrowly what liens may apply to a homestead in determining that liens for the purchase of a manufactured home cannot also attach to the homestead property before the home is affixed to the land. Proposition 16 would remove any doubt that once manufactured housing attaches to homestead property, the homestead can be used to secure the debt for the purchase or installation of the housing by converting or refinancing the original lien.

### **Opponents say**

Voters in 1997 approved the constitutional 12-day waiting period for home improvement liens to attach to a homestead in order to protect homeowners, and this protection should not be diluted. Shortening the waiting period could allow unscrupulous solicitors offering repair services to pressure unsuspecting homeowners into signing contracts committing

them to buy expensive repairs. This cooling-off period is needed to prevent homeowners from being rushed into using their most valuable asset — their home — as collateral for improvement contracts. Since people who sign these contracts forfeit any protection against foreclosure should they default on the payments, any inconvenience caused by the longer waiting period is more than justified.

Allowing conversion or refinancing of debt for the purchase or installation of manufactured housing to become a permissible lien on the homestead property to which the housing is attached could influence homeowners to put their homesteads at risk of foreclosure for nonpayment of debt. This addition to the list of exceptions to foreclosure would add to the recent erosion of the homestead protection, such as by allowing home equity lending.

## Notes

A similar resolution during the 1999 legislative session, HJR 73 by Solomons/Shapleigh, died in the Senate. It would have removed the 12-day waiting period altogether while leaving intact the three-day federal right of rescission.

## **Settling land-title disputes between the state and private landowners**

**(HJR 53 by Cook/Armbrister)**

Texas Constitution, Art. 7, sec. 4, governing the sale of public school land, states that “the Legislature shall not have power to grant any relief to purchasers thereof,” thus limiting the Legislature’s authority to transfer public school land for less than its fair market value.

When Texas joined the union in 1845, it retained all its public lands and set aside vast tracts to establish a permanent source of revenue for public education. The state constitutions of 1845 and 1861 forbade the sale of school lands but allowed the state to lease those lands. The 1869 Constitution removed the prohibition against sale of school land. The 1876 Constitution directed the state to sell public school lands to enrich the Permanent School Fund (PSF), but added the restriction under Art. 7, sec. 4.

Under a law dating to 1836, settlers could survey land they wanted to claim or buy, but the state retained all land not specifically claimed in those surveys. In 1900, all unpatented Texas land not held or dedicated for other purposes reverted to the School Land Fund, overseen by the General Land Office (GLO).

“Scrap file” (SF) is the prefix designation used in GLO’s Archives and Records Division to catalogue and file records pertaining to applications submitted to the land commissioner to buy vacant, mostly unsurveyed, unsold PSF land. This type of file is so named because the application relates to buying a “scrap” of land between existing surveys, more commonly called a “vacancy.” GLO archives and records hold more than 16,000 scrap files.

In 1981, 1991, and 1993, Texas voters amended the Constitution to relinquish the state’s claims for disputed PSF land and to remedy title defects for certain landowners. Those amendments allowed GLO to issue patents — original titles to land granted by the state — to qualified applicants whose land titles were defective.

### **Digest**

Proposition 17 would amend the Constitution to authorize the state to relinquish claim to certain lands, except for mineral rights, and to clear title defects for the owners of those lands. The land would have to be surveyed, unsold PSF land as recorded by GLO, and the land could not be eligible for a state’s original title or patent under any law in effect before January 1, 2002.

Those claiming title to the land would have to demonstrate that they held the land under color of title and that the chain of title originated on or before January 1, 1952. Claimants also would have to show that they acquired the land without knowing that it belonged to the state, that they held a deed recorded in the appropriate county, and that they had paid all taxes on the property, including interest and penalties on any delinquent taxes.

Proposition 17 would not apply to beach land, submerged or filled lands, or islands, nor to

land determined by a judicial decree to be state-owned. The amendment could not be used to resolve boundary disputes or change mineral rights in existing patents. The amendment would take effect January 1, 2002.

The ballot proposal reads: “The constitutional amendment authorizing the legislature to settle land title disputes between the state and a private party.”

## Supporters say

Proposition 17 and its enabling legislation, HB 1402 by Cook/Armbrister, would create a permanent mechanism to settle land-title disputes involving public school lands without the expense and trouble of a constitutional amendment election for each case in dispute. The Legislature, which must submit amendments to Texas voters, meets for only 140 days every two years. Currently, an owner of land subject to a disputed title must wait until the Legislature places a constitutional amendment on the ballot for that specific concern, after which voters may reject the amendment.

The state needs a way to clear the title to land held by innocent parties, resolve inequities, and avoid expensive court fights. In some cases, the current owner bought land in good faith but now faces the prospect of having to buy it again — or possibly lose land held in the family for years — because of a dispute over events that occurred as long ago as the 1800s.

Proposition 17 would allow GLO to consider title disputes arising from when unscrupulous land dealers sold state lands to unsuspecting buyers or cases in which state lands inadvertently were attached to adjacent private tracts because of faulty surveys. GLO estimates that as many as 1,000 claims over disputed titles in its scrap files remain to be resolved. Texas voters should not have to judge these individual disputes. Similar amendments to remove uncertainty over land titles affecting relatively few landowners had to be placed on the statewide ballot in 1981, 1991, and 1993. Voters also will have to decide a title dispute involving Bastrop County landowners in Proposition 1 on this ballot. Proposition 17 would eliminate the need to decide such cases by using a constitutional amendment in the future.

State law already directs the School Land Board to manage and sell state lands held in trust for the benefit of education programs. The board has experience and expertise in handling these matters and is the appropriate forum for evaluating the claims of individual property owners while also protecting the public interest.

Previous constitutional amendments have established a precedent of a clear chain of title for 50 years as being sufficient to demonstrate ownership of the land. In addition, the practice of land surveying has improved vastly in the past half century, and lands surveyed from 1953 on should be reasonably accurate.

## Opponents say

The Legislature and Texas voters should retain the right to review specific decisions made to relinquish the state's interests and to resolve title problems involving individual landowners. Some of the land in the scrap files could be very valuable, and adequate checks and balances should be in place to protect the state's interests.

The exact number of future claims cannot be known because it would be prohibitively expensive to complete a detailed survey of all public school lands in Texas. Future claims — and some claims now pending before GLO, such as those involving landowners in Bastrop County — could fail to meet the restrictions established by Proposition 17 and still would require a separate constitutional amendment.

## Notes

HB 1402, the enabling legislation, would allow claimants holding disputed PSF land to apply to the land commissioner for a patent and would authorize GLO to make a preliminary determination of the claim. If the commissioner determined that the claimant substantially met the eligibility requirements spelled out in HJR 53, the School Land Board would have to meet to determine the claim's validity. HB 1402 would take effect upon approval of the constitutional amendment.

Proposition 1 (HJR 52 by Cook/Armbrister), also on the ballot, would amend the Constitution to relinquish the state's surface interest in disputed tracts in the A.P. Nance Survey in Bastrop County. (See pages 5-7.)

## Consolidating and standardizing court fees (SJR 49 by Armbrister/Thompson)

City, county, and district courts, justice courts, and correctional programs collect court fees and costs in both civil and criminal cases. The comptroller allocates state court fees and costs to various funds or programs, such as the abused children's counseling account, the motor carrier weight violations fund, or the fugitive apprehension fund. According to the Comptroller's Office, cities now collect up to 20 state court fees, costs, and fines, and counties collect up to 33, in addition to as many as 30 local court fees, costs, and fines. Some reports required by the state are due quarterly, some on the 10th or 15th of the month, and others on the last day of the month.

Statutory provisions for collecting and allocating state court costs are found throughout the Code of Criminal Procedure and the Government and Transportation codes. The Government Code imposes civil filing fees, and the Local Government Code imposes other fees, such as those for issuing birth certificates and marriage licenses.

The 75th Legislature in 1997 combined 10 criminal court fees into a single consolidated court cost to be remitted to the comptroller (Code of Criminal Procedure, art. 102.075). The consolidated fee applies only to offenses committed after September 1, 1997. The 75th Legislature also created four new court fees, and subsequent legislatures have authorized additional fees.

SCR 12 by Ellis, adopted by the 76th Legislature in 1999, directed the comptroller to "develop strategies for increasing the efficiency and reducing the complexity of fee collection and dispersal by county and municipal clerks" and to submit recommendations to the Legislature by January 1, 2001. The comptroller's March 2001 report, *Issues and Recommendations Regarding the Structure of State Court Costs and Fees*, recommended consolidating all criminal court fees and costs into a single fee, consolidating all civil court fees and costs into a single fee, and requiring uniform quarterly reporting and remittance of such fees to the comptroller.

### Digest

Proposition 18 would add a new sec. 46 to Art. 3 of the Constitution to invalidate a criminal or civil court fee that was required to be collected by local government personnel and remitted to the comptroller unless the requirements for collecting, depositing, reporting, and remitting that fee conformed to a consolidation and standardization program enacted by the Legislature to govern those activities. This requirement would apply only to fees imposed by the Legislature after it enacted such a program. Such a fee could take effect before January 1 of the year following the regular session during which the fee was adopted only if the bill adopting the fee finally passed by a record vote of two-thirds of all members of each house.

The ballot proposal reads: "The constitutional amendment to promote uniformity in the collection, deposit, reporting, and remitting of civil and criminal fees."

## Supporters say

Proposition 18 would help ease a wasteful burden on local governments and courts by establishing that, to be valid, any court fee created in the future would have to conform to a consolidation and standardization program created by the Legislature for collection, reporting, and remittance to the comptroller. Over the past 10 years, the number of court funds that cities and counties must track and maintain roughly has doubled. A single violation can result in the collection and allocation of 30 to 40 different court fees, costs, and fines.

A constitutional amendment is needed to lock all court fees into a consolidation and standardization program so that they do not proliferate again in the future. Without Proposition 18, future legislatures could adopt more court fees by statute on top of and separate from the program, just as the Legislature has done since adopting the 1997 consolidated fee. This eventually would result in a complex administrative problem similar to the one that the courts now face.

The language of Proposition 18 is flexible enough to allow future legislatures to add court fees as needed while being prescriptive enough to keep fees within the confines of the consolidated program. All questions regarding existing fees can be addressed thoroughly in the 2003 session within the guidelines established through Proposition 18 without the Legislature enacting a consolidated fee program in advance. The intent of any enabling legislation would continue to be to minimize complexity in court fee administration by creating one standardized program for court fee collection, which can occur before or after the amendment is adopted.

Prohibiting new fees from taking effect until January 1 of the year following the session in which they were adopted would recognize the special administrative tasks set in motion by the adoption of new fees. It takes time for counties to implement new court costs and fees. Not only do local officials need to research new legal requirements at the close of a legislative session, they also must update computer systems, order new collection ticket books, and conduct staff training. Many current court fees are adopted with a September 1 effective date, which means that if a county does not begin remitting its new collections to the comptroller on September 1, it can be subject to late penalties. The January 1 effective date is a more reasonable deadline for all concerned, but if necessary, the Legislature could adopt an earlier effective date by the vote of a two-thirds majority in each house.

Standardizing court fees would help ease the administrative burden on local governments due to requirements to collect and remit court fees for the state. Fees do not have uniform reporting and remittance dates, and cases filed in different years are subject to different sets of fees. Reporting court costs and fees to the state under the current system is time-consuming and requires as many as a dozen different forms, depending on the type of fee. Simplifying the fee-collection process would enable smaller jurisdictions to use a smaller portion of their limited resources to identify, collect, and remit fees.

Reducing the number of court fees, costs, and fines is important in light of ancillary administrative problems such as increasing numbers of not-guilty pleas and appeals, which have resulted in larger caseloads before the courts. Also, as more defendants are cited with

failure to appear in court, more warrants have been issued. Courts also have seen an increase in the number of requests for indigence hearings and more requests for payment alternatives, including community service, payout plans, and jail stays. All of these issues have exacerbated the administrative problems that localities face, taking time away from processing cases and creating the need for a simpler, more coordinated approach to the administration of court fees and costs.

## Opponents say

Proposition 18 could tie the hands of future legislatures by invalidating any court fee that did not follow the consolidation and standardization program enacted for reporting and collecting such fees. The Legislature might find it necessary at times to add a court fee outside of the standardized and consolidated collection, reporting, and remittance system. Furthermore, waiting to add new fees to the consolidated program until January 1 following the session in which they were adopted would be a burden for worthy programs supported by the collection of such fees.

## Other opponents say

A constitutional amendment to consolidate and standardize court fees is unnecessary. All the desired changes to court fee administration could be accomplished through statutory changes. The Legislature made a start toward this goal in the 1997 session with the consolidated court cost program.

This ballot proposal will mislead voters. Because the Legislature failed to pass enabling legislation for this proposal, lawmakers must wait until 2003 to amend the statute, so Proposition 18 could not take effect for at least two years even if voters approve the amendment. A statewide vote on this proposition should be delayed until the enabling legislation is in place.

## Notes

SB 1378 by Armbrister/Thompson would have amended, repealed, and recodified various statutes to consolidate and standardize the collection, remittance, and distribution of fees imposed in criminal and civil cases. SB 1377 by Armbrister/Thompson would have required the comptroller after each regular legislative session to compile and publish in the *Texas Register* a list of each new law imposing or changing a state court cost or fee. No cost or fee on the list could have taken effect before the January 1 after the effective date of the law creating it unless the law expressly provided that the January 1 date did not apply or unless the law took effect before August 1 following the regular session in which the Legislature enacted it. Both bills passed the Senate but died in the House when they were scheduled for House floor debate too late in the 2001 regular session to be considered. Neither bill would have been contingent on approval of SJR 49 (Proposition 18).

## **Authorizing an additional \$2 billion in general obligation bonds for water projects (HJR 81 by Counts/Brown)**

Texas Constitution, Art. 3, sec. 49-d-8 establishes the Texas Water Development Fund II, funded by state general obligation bonds authorized by a series of constitutional amendments. The fund includes separate accounts for the state loan program, the state participation program, and the Economically Distressed Areas Program (EDAP).

The Texas Water Development Board (TWDB) operates the state loan program to make loans to local governments or nonprofit water-supply corporations for water supply projects, including construction or improvement of wells, transmission lines, pumping facilities, reservoirs, and water treatment plants; water-quality enhancement projects, such as wastewater treatment and collection systems; and flood-control projects, such as storm water retention basins or flood warning systems.

The state participation program helps local entities develop water infrastructure projects of regional benefit. Under the program, the state retains 50 percent temporary ownership in a project. The state may co-own the property, facilities, or water. For example, the state could own 50 percent of the water in a reservoir built through the program. The program defers local sponsors' repayments to the state for three years. In the fourth year, local sponsors begin to repay the loan — that is, buy back the state's temporary ownership. The repaid principal goes back into the state participation program.

EDAP provides financial assistance for the development of water and wastewater services in economically distressed areas, such as colonias. Areas in counties with per-capita income at least 25 percent below the state average and unemployment at least 25 percent above the state average or along the international border are eligible for assistance, which may be in the form of a grant, loan, or grant/loan combination. The total amount of principal of the bonds issued for EDAP may not exceed \$250 million.

SB 2 by Brown/R. Lewis, effective September 1, 2001, creates the water infrastructure fund as a special account in general revenue. Money from the fund must be used to implement water projects recommended in the state and regional water plans.

### **Digest**

Proposition 19 would add Art. 3, sec. 49-d-9 to the Constitution, allowing TWDB to issue up to \$2 billion in additional general obligation bonds for one or more accounts of the Texas Water Development Fund II. Of the additional bond authority, \$50 million would have to be used for the water infrastructure fund created by SB 2. A limitation on the percentage of state participation in any single project would not apply to a project funded with the proceeds of bonds issued under this authority.

The ballot proposal reads: "The constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed \$2 billion."

## Supporters say

Proposition 19 would authorize TWDB to issue up to \$2 billion in additional general obligation bonds. These low-interest bonds would be used to back more loans to Texas communities to finance projects for water supply, water quality, and flood control, as well as for the state participation program.

Selling general obligation bonds is the most cost-effective way to raise the large sums needed to pay for expensive water projects that promote economic development and better living conditions throughout Texas. Through the state loan program, the state uses its superior credit rating to borrow money, which, in turn, is lent to local governments to finance water projects at a lower interest rate than they would have to pay on their own bonds. The local governments then pay back the loans, which cover the cost of debt service on the state bonds. The bonds are self-supporting, since the money the state lends is returned with interest. This program is enormously helpful to local communities and costs the state nothing in general revenue.

Although the board has not yet issued all the water bonds now authorized, it soon will need additional bond authority. The board has about \$490 million remaining in its bond authorization. It has issued almost \$1 billion in bonds since 1992, and nearly two-thirds of that amount has been in the past five years, largely in response to Texas' rapid population growth. The remaining authorization is projected to be depleted during fiscal 2004-05. Waiting until after the next legislative session to seek voter approval for additional authorization would mean delaying important projects.

An additional authorization of \$2 billion would be relatively small in comparison to the state's total water needs. The regional planning groups created by SB 1, enacted in 1997, have identified a need for \$17 billion for water-supply projects alone, not counting funds needed for treatment and storage. Some studies have projected that the cost to meet Texas' total water needs over the next 50 years will approach \$100 billion.

Improvements to Texas' water infrastructure, in addition to increased water conservation, are necessary to meet future water needs. Although conservation efforts are projected to reduce statewide per-capita water consumption by 22 gallons per day by 2050, Texas' population growth will outweigh reductions in per-capita demand. Total projected water demand is projected to increase from 17 million acre-feet in 2000 to 20 million acre-feet in 2050, an increase of 18 percent.

The additional bond authority would include \$50 million for the new water infrastructure fund created by SB 2. This fund will help to implement projects recommended by the regional planning groups and in the state water plan to be developed by January 2002. Money from the fund will be used to provide grants, zero-interest loans, and low-interest loans to political subdivisions for water projects, including projects outside of urban areas and projects serving economically distressed areas. The fund also may be used to make loans at below-market interest rates to political subdivisions for project costs associated with planning and design, permitting, and compliance with state or federal regulations.

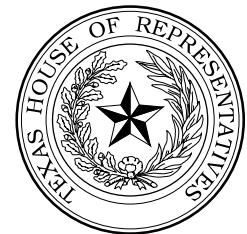
## Opponents say

Authorizing TWDB to issue additional bonds would be premature. The \$490 million remaining in the board's bond authorization should be sufficient through the next biennium. Without an urgent need for additional authorization, the state should wait until the next legislative session to ask the voters for the authority to issue more bonds.

Proposition 19 is predicated on the assumption that all projects proposed by the regional planning groups are needed. Many of these projects have not been through a rigorous cost-benefit analysis. The state should conduct careful analysis before embarking on a \$17 billion spending plan to build dams, reservoirs, and water pipelines across the state. Many projects also could present potential environmental problems that should be studied further before authorizing additional bonds. For instance, the construction of a new dam and reservoir could have a drastic impact on vegetation and wildlife in the area and on the habitats of species that live far downstream.

Also, the state should explore less capital-intensive means of managing water supplies. Water conservation and drought management may provide cheaper and more efficient alternatives to building new dams, reservoirs, and pipelines. For example, of the \$17 billion in new project spending recommended by the regional planning groups, about \$6 billion would be spent in North and East Texas. Dallas, the major water user in the region, already consumes more water per person than any other Texas city, yet lags far behind other cities in implementing water conservation programs. The state should not add blindly to its debt burden without first exploring more cost-effective alternatives for managing water.

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